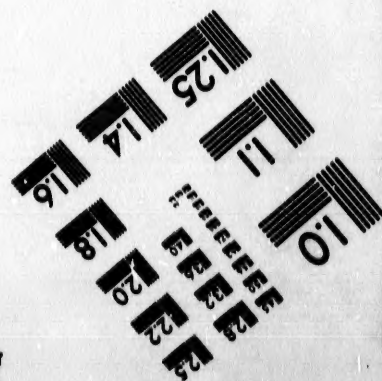
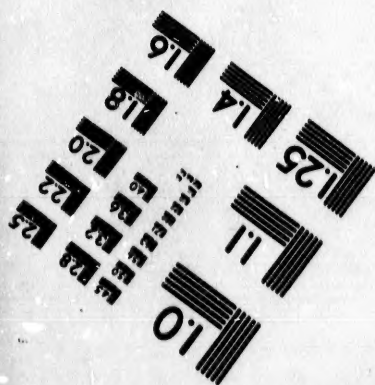
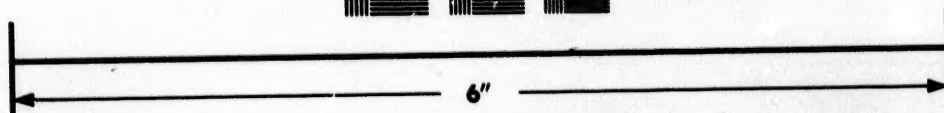
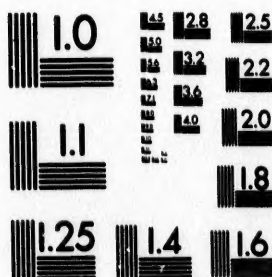


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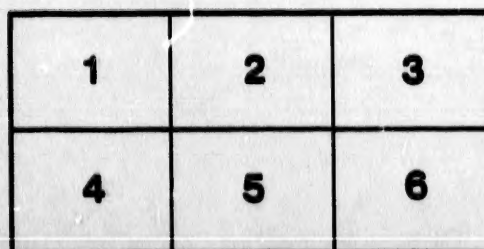
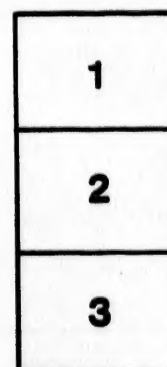
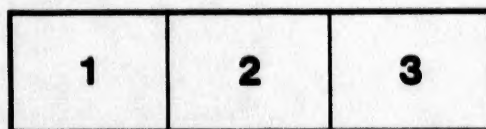
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THE  
PROVINCIAL JUSTICE,  
OR  
**Magistrate's Manual,**  
BEING A COMPLETE DIGEST  
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CRIMINAL LAW OF CANADA,  
AND  
A COMPENDIOUS AND GENERAL VIEW  
OF THE  
PROVINCIAL LAW OF UPPER CANADA:  
WITH PRACTICAL FORMS,  
FOR THE USE OF THE MAGISTRACY.

---

By **W. C. Keele, Esq.,**  
ATTORNEY-AT-LAW.

---

THIRD EDITION.

---

TORONTO:  
H. BOWELL, KING STREET.

1881.



PROVINCIAL JUSTICE

BEING A COMPLETE DIGEST

CRIMINAL LAW OF CANADA

Entered, according to Act of the Provincial Legislature, in the  
year 1851, by WILLIAM CONWAY KEELE, the Author and sole  
Proprietor, in the office of the Registrar of the Province of  
Canada.

ROUSELL & THOMPSON, PRINTERS, TORONTO.

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1851

THIRD EDITION.

TORONTO

ROUSELL, KING STREET

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DEDICATED,  
WITH SINCERE RESPECT,  
TO  
THE EARLY PATRONS OF THIS WORK,

*The Magistracy*

OF  
UPPER CANADA,

BY  
THE AUTHOR.



WITH FINGER-PRINTS

THE EARLY EVIDENCE OF THIS WORK

OF THE

UPPER CANADA

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## INTRODUCTION.

The important changes that have recently taken place in the municipal institutions of this section of the province will doubtless render a digest of the new law a desirable acquisition; and particularly to those persons who, as municipal officers, are now called upon to take an active part in the administration of the laws, and who will, as justices of the peace, need something more than the mere statutes to guide them in the discharge of their duties. The last edition of this work has been disposed of, and the author now cheerfully responds to the call for a new edition. With respect to the merits of the former editions, it is not for him to speak. He cannot however omit recurring with pride and satisfaction to the extensive patronage and circulation which the work has obtained, and he trusts that the purpose for which it was originally designed has been successfully accomplished.

The General Municipal Act of the 12 Vic. c. 81, ranks among the most important of the measures that have been passed relative to Upper Canada since the union. Its provisions are lengthy and in some respects elaborate, if not intricate. To render them plainly and easily intelligible to all classes, is one of the objects aimed at in the present edition. The reader will be aware that this act was amended in the following session, by the 13 & 14 V. c. 64. It was deemed expedient, on account of the nature and extent of the amendments, that they should be comprised in schedules to be annexed to the act—and in such form they appear. This method of amendment, although novel in its character, is, under the circumstances, judicious. In order to simplify and elucidate the municipal law, as it now stands, the author concluded that the best plan would be to blend the two acts together. This he has done by introducing the amendments into the original act, in their appropriate places; taking care at the same time to distinguish such amendments from other matter by placing a bracket thus [ ] at the beginning and the end of each amendment, thereby saving the reader the trouble and perplexity of resorting to the schedules at all, and giving to the whole, in effect, the reading of an original act. He has also subdivided the act into sections, placing each under its proper head or title, such as "Counties," "Cities," "Towns," &c.; and those clauses of the act which have a general application, he has placed under the title of "Municipal Corporations."

The object of a digest is to convey to the reader, in an abridged form, the substantive parts of law, without embarrassing him with unnecessary prolixity or detail; and this is all the author has ventured to attempt in the composition of this volume. The municipal

acts have been published entire, in a convenient pamphlet form, by the enterprising editor of a provincial press, and can be easily procured at a cheap rate by those who may wish to possess their details in full.

Our criminal law has undergone but little modification since the publication of the last edition; such alterations as have been made, up to the last session of parliament, are all carefully noticed.

The law and office of coroner has been added to the work. It contains also numerous general forms of office for the guidance of the magistracy; and embraces many other topics of general interest,—such as the new assessment and jury laws, the laws relating to elections, customs, banking, post office, public meetings, and others of a general character, interesting as well to the man of business as to the professional reader.

A new and cheap edition of all the statutes would be an important help to the magistracy, which it is to be hoped will be supplied at the public expense, at no distant date.

The author would also respectfully call the attention of the magistracy to the statute 4 & 5 V. c. 12, which requires justices of the peace to make a return of all convictions and fines had before them to the next general quarter sessions, under a penalty of £20. The accidental neglect of this duty has sometimes exposed magistrates to vexatious *qui tam* actions, an annoyance which might be easily guarded against in future by instructing clerks of the peace to remind the magistracy, by means of a printed circular, to be addressed to them periodically, a short time before the sessions, to make their returns.

It should also be borne in mind that under a late statute (the 13 & 14 V. c. 54), an appeal now lies in all cases to the sessions against convictions before individual magistrates. Previously to the passing of this act, an appeal lay only in those cases where it was expressly given by the statute itself. But now it is general, and this change in the law is doubtless an improvement. It will stimulate the presiding justice to a vigilant and impartial discharge of his duty on the one hand, and, on the other, afford just and proper relief in those cases which, through some error in judgment, may require revision.

A very copious index to all the principal matters and forms will be found at the end of the volume; and in the ADDENDA, preceding the index, will be found one or two items which were accidentally omitted in the body of the work.

With these few remarks the author now submits his labours to an indulgent public, hoping that as the former editions of this work were found useful in their generation, and perhaps not altogether unworthy of the distinguished patronage they received, so the present edition may earn for its author the approving judgment of his former friends and patrons.

London, 30 April, 1831.

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**CANADA.**

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**MAGISTRATE'S MANUAL.**

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**ABDUCTION.**

By the 4 & 5 V. c. 27, § 19: where any woman shall have any interest, whether legal or equitable, present or future, absolute, conditional or contingent, in any real or personal estate, or shall be an heiress presumptive or next of kin to any one having such interest, if any person shall from motives of lucre take away or detain such woman against her will, with intent to marry or defile her, or to cause her to be married or defiled by any other person, every such offender and every person counselling, aiding or abetting such offender, shall be guilty of felony, and being convicted thereof shall be liable to be imprisoned at hard labour in the Provincial Penitentiary for any term not less than seven years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years. § 20. If any person shall unlawfully take or cause to be taken any unmarried girl being under the age of sixteen years, out of the possession and against the will of her father or mother, or of any other person having the lawful care or charge of her, every such offender shall be guilty of a misdemeanor, and being convicted thereof shall be liable to suffer such punishment by fine or imprisonment, or by both, as the court shall award.

**ABORTION.**

By the 4 & 5 V. c. 27, § 13, administering poison or other noxious thing to any woman with intent to procure abortion, or unlawfully using any instrument or other means whatsoever with the like intent, is made felony, and the offender liable at the discretion of the court to be imprisoned at hard labour in the Penitentiary for life, or any term not less than seven years, or in any other place of confinement not exceeding two years.

## Absconding Debtors.

### ABSCONDING DEBTORS.

By the Division Court Act, 13 & 14 V. c. 53, § 54, it is enacted, That if any person or persons in any county of Upper Canada, being indebted in any sum not exceeding *twenty-five pounds*, nor less than *twenty shillings*, for any debt or damages arising upon any contract express or implied, or upon any judgment, shall abscond from this Province, leaving personal property liable to seizure under execution for debt in any county in Upper Canada, or shall attempt to remove his, her or their personal property of the description above mentioned,\* either out of Upper Canada or from one county to another therein, or from Upper to Lower Canada, or shall keep concealed in any county of Upper Canada to avoid service of process, it shall and may be lawful for any creditor or creditors of such person or persons, his, her or their servant or agent, to make application to the clerk of any division court of the county wherein the debtor or debtors were or was last domiciled, or where the debt was contracted, or to the judge of the county court therein, or to *any justice of the peace* in any county of Upper Canada, and upon making or producing an affidavit or affirmation to the purport of that in the schedule to this act annexed, marked D, (which affidavit or affirmation the said clerks, judges, and *justices of the peace* are respectively hereby authorized to administer,) and upon then and there filing the said affidavit or affirmation with such clerk or judge, or if taken before a justice of the peace, with such justice of the peace (whose duty it shall be to transmit the same forthwith to the clerk of the division court, within whose division the same was so made or taken, to be filed and kept among the papers in the cause,) it shall be lawful for such clerk, judge, or justice of the peace forthwith to issue a warrant under his hand and seal, directed to the bailiff of the division court within which the same was issued, or to any constable of the county, commanding such bailiff or constable to attach, seize, take and safely keep all the personal estate and effects of the absconding, removing or concealed person or persons, of what nature and kind soever, liable to seizure under execution for debt, within such county, or a sufficient portion thereof to secure the sum mentioned in the warrant, with the costs of the action, and to return the same forthwith to the division court of the division wherein such warrant

\*Goods or chattels.

was issued, upon receipt of which warrant the bailiff or constable to whom the same may be directed shall (upon being paid his lawful fees for levy, mileage, and otherwise thereupon, including the fees of appraisement) forthwith execute the same, and make a just and true inventory of all such personal estate and effects as he shall seize and take by virtue thereof, and such bailiff or constable shall within twenty-four hours thereafter call to his aid two freeholders, who shall first be sworn by such bailiff or constable, to appraise the said personal estate and effects so seized; and such bailiff or constable shall forthwith return the said inventory, which shall be attached to such appraisement to the clerk of the division court of the division within which such warrant was issued, and which warrant may be in the form of that in the schedule to this act annexed, marked E: provided always, that the said appraisers shall be entitled to receive for each day they may be employed in carrying its enactments into effect the sum of *two shillings and sixpence* each, to be paid in the first instance by the plaintiff or plaintiffs and allowed in the costs of the cause: provided always, that proceedings may be conducted to judgment and execution in any case commenced by attachment under the provisions of this section, in the division court of the division within which the warrant of attachment shall issue; and that when proceedings shall be commenced in any case before the issuing of an attachment under the provisions of this section, such proceedings may be continued to judgment and execution in the division court within which such proceedings may have been commenced; and the property seized upon any such attachment shall be liable to seizure and sale under the execution to be issued upon such judgment, or the proceeds thereof, in case such property shall have been sold as perishable, shall be applied in satisfaction of such judgment: provided further, that it shall not be lawful for any plaintiff to divide any cause of action into two or more suits for the purpose of bringing the same within the provision of this section, but any plaintiff having a cause of action above the value of *twenty-five pounds*, for which an attachment might be issued under this section if the same were not above the value of *twenty-five pounds*, may abandon the excess, and upon proving his case, shall and may recover to an amount not exceeding *twenty-five pounds*, and the judgment of the court in such case shall be in full discharge of all demands in respect of such cause of



## Absconding Debtors.

action, and the entry of judgment therein shall be made accordingly.

### SCHEDULE D.

County of                    }

A. B. of——in the county of (*here state the county*) the plaintiff (*or agent, as the case may be*) maketh oath and saith, that C. D., (*the debtor's name*) is (*or are*) justly and truly indebted to (*the creditor's name*) in the sum of ——of lawful money of Canada, for (*here state the cause of action briefly*;) and this deponent further saith, that he hath good reason to believe, and verily doth believe, that the said C. D. hath absconded from this province and hath left personal property liable to seizure under execution for debt within the county of——; (*or*) that the said C. D., is (*or are*) about to abscond from this province, or to leave the county of——with intent and design to defraud the said ——(*the creditor*) of the said debt, taking away personal estate liable to seizure under execution for debt; (*or*) that the said C. D. is concealed within the county of——to avoid being served with process, with intent and design to defraud the said——(*the creditor*) of his said debt; and this deponent further saith, that this affidavit (*or affirmation, as the case may be,*) is not made, nor the process thereon to be issued, from any vexatious or malicious motive whatever.

A. B.

Signature of deponent.

Sworn (*or affirmed as the case may be,*) before me, the day——one thousand eight hundred and

### SCHEDULE E.

County of                    }  
(*here insert the county*)    } To A. B., bailiff of the division  
                                      } court of the said county of——(*or*)  
                                      } to A. B., a constable of the county  
                                      } of——(*as the case may be.*)

You are hereby commanded to attach, seize, take and safely keep all the personal estate and effects of C. D., (*naming the debtor,*) an absconding, removing or concealed debtor, of what nature or kind soever, liable to seizure under execution for debt within the county of (*here name the county*) or a sufficient portion thereof to secure A. B., (*here name the creditor,*) for the sum of (*here state the amount sworn to be due*) together with the costs of his suit thereupon, and to return this warrant with what you shall have taken thereupon, to the clerk of the (*here state the*

number of the division) division court of the county aforesaid forthwith:—and herein fail not.

Witness my hand and seal, the——day of——18

E. F. (L. S.)

Judge, clerk or justice of the peace, (*as the case may be.*)

## ACCESSORY.

An Accessory is one guilty of Felony, not as a principal, but by participation, command, advice or concealment. In high treason there can be no accessories, as all concerned are considered principals: so in petit larceny, misdemeanor, or inferior crimes of the like nature, under the degree of felony, there can be no accessories. The mere concealment of a felony *intended* to be committed, does not render the concealer an accessory. It is only misprision of felony.—2 *Haw. c. 29, § 23.*

There are accessories *before* and *after* the fact.

An *Accessory before the fact* is, as Hale defines it, one who being absent at the time the crime is committed doth procure, counsel, or advise the commission of it; and his absence is necessary to constitute him an accessory.

*Accessories after the fact*, are those, who knowing the felony to have been committed by another, receive, relieve, comfort or assist, the felon.—1 *Hale*, 618.

But if others accompany the principal to commit a felony, and keep within hearing, or upon watch, all are in such case deemed principals.—2 *Haw. c. 29, § 7, 8.*

A wife cannot be accessory to her husband, either before or after the fact, unless she be any way guilty of procuring him to commit the felony.—2 *Haw. 320.*

Anciently, the accessory could not be tried unless the principal were attainted; 3 *Ed. I. c. 14*; but the law in this respect has been altered by several statutes,\* and now, by the 4 & 5 *V. c. 24, § 37*, accessories before the fact to felony at common law, or by statute, shall be deemed guilty of felony, and may be indicted and convicted as accessory before the fact to the principal felony, either together with, or after the conviction of the principal felon, or may be indicted for and convicted of a substantive felony, whether the principal felon shall or shall not have been previously convicted, and may be punished in the same manner as any accessory before the fact to the same felony, if convicted as an accessory, may be punished, and

\* 1 *Ann. c. 9, § 1.* 19 *G. II. c. 30.*

such accessory may be tried and punished by any Court having jurisdiction to try the principal felon. § 38. Accessories after the fact, may also be tried where the principal felony was committed, or where the party shall have become accessory: accessories not liable to be again indicted for the same offence. § 39. Accessories may be prosecuted, notwithstanding the principal felon shall die or be pardoned, or otherwise delivered before *attainder*. § 53. In the case of every felony punishable under this Act, every principal in the second degree, and every accessory before the fact, shall be punishable with death or otherwise, in the same manner as the principal in the first degree is by this Act punishable, and every accessory, after the fact to any felony punishable by this Act, (except only a receiver of stolen property), shall, on conviction, be liable to be imprisoned for any term not exceeding two years; and every person who shall aid, abet, counsel, or procure the commission of any misdemeanour punishable under this Act, shall be liable to be indicted and punished as a principal offender.

By the 4th and 5th V. c. 25, § 54, if any person shall aid, abet, counsel, or procure the commission of any offence which is by this Act punishable on summary conviction, either for every time of its commission, or for the first and second time only, or for the first time only, every such person shall, on conviction, before a Justice or Justices of the Peace, be liable for every first, second, and subsequent offence, of aiding, abetting, counselling, or procuring, to the same forfeiture and punishment to which a person guilty of a first, second, or subsequent offence, as a principal offender is by this Act made liable.

The 4th and 5th V. c. 26, § 26, also contains a provision similar to the 4th and 5th V. c. 25, § 54, for the punishment of accessories to felonies, &c. under that Act.

And by the 4th and 5th V. c. 27, § 35, principals in the second degree and accessories before the fact to offences under this Act, shall be punishable as the principal in the first degree: and accessories after the fact shall be liable to imprisonment, not exceeding two years.—See also *post* title, "*Receivers of Stolen Goods*." "*Explosive Substance*."

*Information of the party, to ground a Warrant for apprehending an Accessory before the fact.*

A. B. of the Township of — in the County of York, maketh oath and saith, that on — the — day of —

last, his dwelling-house, situate — was about the hour of nine in the night of the same day, feloniously and burglariously broken and entered by some person or persons, and that (*describe the property stolen*) his property were then and there feloniously stolen, taken and carried away, and that he hath just cause to suspect, and doth suspect that C. D. late of — aforesaid, labourer, did commit the said felony and burglary, and that E. F. late of — aforesaid, labourer, did advise, aid and abet, the said C. D. in the aid felony.

Sworn, &c.

A. B.

*Warrant thereon.*

County of York, } To the Constable of — and all other  
to wit. } Her Majesty's Peace Officers within the  
said County.

Whereas A. B. of — gentleman, hath this day made oath, before me, W. S., Esq., one of Her Majesty's Justices of the Peace in and for the said County, that (*here state the facts as set forth in the information*). These are therefore in Her Majesty's name to charge and command you forthwith to apprehend and bring before me the said C. D., and E. F., to answer the said complaint, and to be further dealt with according to Law. Given under my hand and seal this — day of — 18—.

*Commitment.*

County of York, } To the Keeper of the Common Gaol  
to wit. } of — or his deputy.

Receive into your custody the bodies of C. D., and E. F., herewith sent you, brought before me, W. S., Esq., one of Her Majesty's Justices of the Peace in and for the said County, by R. S., Constable of — charged upon the oath of A. B., with (*here state the offence*); and them safely keep in your custody until they shall be discharged by due course of Law. Given under my hand and seal at — this — day of — 18—.

*Warrant to apprehend an Accessory after the fact, for harbouring the Principal.*

County of York, } To the Constable of — and all other  
to wit. } Her Majesty's Peace Officers within the  
said County.

Whereas C. D., of — stands charged before me, J. C., Esq., one of Her Majesty's Justices of the Peace in and

## Acquittal.

for the said County, on the oath of A. B., with having (*state the offence*); and whereas P. Q. hath this day also made oath before me, that T. T., of — aforesaid, yeoman, since the said felony and burglary was committed, hath received, harboured and maintained, him the said C. D. in the dwelling-house of him the said T. T., at — aforesaid, he the said T. T. well knowing the said C. D. to have committed the said felony and burglary. These are therefore to command you, forthwith to apprehend and bring before me, at this place, the body of the said T. T., to answer to the said charge, and to be further dealt with according to Law. Given under my hand and seal, at — in the said County, this — day of — 18—.

## ACCIDENT.

By 10 and 11 Vic. ch. 61, in case of death by the wrongful act, neglect, or default of any party, such party may be sued for damages by the executor or administrator of the deceased party, and the amount divided among the deceased's wife and family, as the jury by their verdict shall find and direct.—See *post* title "*Duel*."

## ACQUITTAL.

And see—AUTREFOIS ACQUIT.

An Acquittal is the deliverance and setting free of the accused from the imputation of guilt; as when a prisoner is found by a Jury not guilty of the offence with which he stood charged before them upon his trial.—*Deacon's C. Law*, 18.

Where there is no evidence whatever to affect a party who is unjustly made a defendant with others in a prosecution, the judge may, in his discretion, direct the jury to acquit him in the first instance, and such an acquittal will enable him to give evidence in behalf of the other defendants.—1 *Holt*. 275; *Gil. Ev.* 117; *Brill N. P.* 285.

Every prisoner upon his acquittal, it has been said, has an undoubted right to a copy of the record of such acquittal; and after a demand of it has been made of the proper officer, the latter may be punished for refusing to make it out.—*R. v. Brangan*, 1 *Leach*, 27.

But if there was probable cause for the indictment, or where the acquittal arises from the incompetency of a witness, the court will not then permit the prisoner to have a copy of the indictment.—*R. v. Quick*, 1 *Leach*, 28, *Note* (a); *R. v. Bevan*, *Ibid* 1; *Ld. Ray*, 253.

## ACTION.

No action can be brought against a Justice of the Peace for anything done by him by virtue of his office, until notice in writing of the intended writ or process shall have been delivered to him, or left at his usual place of abode, at least *one calendar month* before the suing out or serving the same; in which notice shall be clearly and explicitly contained the cause of action which the party suing claims to have against such Justice; and on the back of such notice shall be endorsed the name and place of abode \* of the plaintiff's attorney or agent.—24 Geo. II. c. 44, § 1.

The party may give the notice in his own name, or in the name of his attorney; but the particular writ intended to be issued must be stated, and it must be served one full calendar month previous to such writ being issued, and the month begins with the day on which the notice is served.—3 T. R. 623.

It is necessary to be particular in describing the offence, as no evidence can be given by the plaintiff of any cause of action except such as is contained in the notice: a general notice of an action for an assault and false imprisonment is bad.—7 T. R. 631.

The action must be commenced within *six calendar months* after the act committed, and must be brought in the county where the grievance complained of arose.

No action shall be brought against any constable, or any officer acting by his order, for anything done in obedience to any warrant of a Justice, until demand made, or left at his usual place of abode, by the party intending to bring such action, or by his attorney or agent, in writing, signed by the party demanding the same, of a perusal of a copy of the warrant, and that the same hath been refused or neglected for six days after such demand: and if after any demand and compliance, any action shall be brought, without making the Justice who signed the warrant defendant, on producing and proving such warrant on the trial the jury shall give a verdict for the defendant, notwithstanding any defect of jurisdiction of the Justice; and if such action be brought jointly against the Justice and Constable, &c., on proof of such warrant the jury shall find for the Constable; and if the verdict shall be given against the Justice, the plaintiff shall recover costs against him, including such



costs as the plaintiff is likely to pay to the defendant for whom the verdict shall be found. And where the plaintiff in such action against a Justice shall obtain a verdict, and the Judge shall certify on the record that the injury was wilful and malicious, the plaintiff shall have double costs. —24 G. II., c. 44, § 1, 6, 7. It is not necessary in the notice that the attorney's christian name should be written in full, but his residence must be specifically stated.—7 Taunt. 53; 2 Marsh, 367; 3 Bos. and Pull.

By the 4 & 5 V. c. 25, § 67, all actions against any person for anything done under this Act shall be laid and tried in the District, County, or place where the fact was committed, and shall be commenced within *six calendar months*; and not otherwise: and notice in writing of such action, and of the cause thereof, shall be given to the defendant *one calendar month* before such action: the defendant may plead the general issue, and give this Act and the special matter in evidence at any trial thereupon, and no plaintiff shall recover in such action if tender of sufficient amends shall have been made before such action, or if a sufficient sum shall have been paid into Court after such action brought by or on behalf of the defendant, and if a verdict shall pass for the defendant, or the plaintiff shall become non-suit or discontinue any such action after issue joined, or if upon demurrer or otherwise judgment shall be given against the plaintiff, the defendant shall recover full costs as between attorney and client, and have the like remedy for the same as any defendant hath by law in other cases: and if a verdict be given for the plaintiff he shall not have costs against the defendant unless the Judge before whom the trial shall be had shall certify his approbation of the action and of the verdict.

The 4 & 5 V. c. 26, § 40, contains a similar provision in cases of actions under that Statute.

*Notice of Action from the Attorney of the Party to a Justice of the Peace, for false Imprisonment.*

To A. B., one of Her Majesty's Justices of the Peace, acting in and for the County of —

SIR,

I do hereby, as the attorney of C. D., of —, gent., give you notice, according to the form of the statute in that case made and provided, that I shall, at or soon after the end of one calendar month from the time of the service of this notice upon you, cause a writ of summons to be sued out

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of Her Majesty's Court of Queen's Bench\* at Toronto against you, at the suit of the said C. D., for false imprisonment; for that you, on or about the — day of — last, by warrant under your hand and seal, dated the — day of —, did cause the said C. D. to be apprehended and conveyed to the common gaol of — (as the case may be) and to be there imprisoned, and kept and detained there without any reasonable or probable cause for a long time, to wit, for the space of — then next following. Dated this — day of —, 18—.

Yours, &c.,

E. F., residing at *City of Toronto*,  
Attorney for the said C. D.

*Demand on a Constable of perusal and copy of his warrant.*

To Mr. C. D.

I do hereby, as attorney of and for A. B., of —, &c., according to the form of the statute in such case made and provided, demand of you the perusal and copy of the warrant, by virtue or under colour whereof, you did, on or about the — day of — last, apprehend the said A. B., and carry and convey him in custody to and before S. P., Esq., one of Her Majesty's Justices of the Peace in and for the County of — Dated, &c.

Yours, &c.,

W. T., Attorney for the said A. B.

*City of Hamilton.*

*The like on a Gaoler.*

To Mr. A. B.

I do hereby as the attorney for E. F., of —, &c., according to the form of the statute, &c. (*as before*) demand of you the perusal and copy of the warrant of commitment and detainer under which you received into your custody the said E. F. on or about the — day of — instant. Dated, &c.

Yours, &c.,

W. T., Attorney for the said E. F.

*City of Hamilton.*

It seems proper that constables should retain their warrants, and not return them to the magistrate, otherwise they cannot comply with the directions of the Act.—(*Toone.*)

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\* Or Common Pleas.

**ACTS OF PARLIAMENT.**

By the 14 G. III. c. 11, it is enacted, that the Secretary of this Province shall endorse on every Act of the Legislature which should pass during the then present and every future session thereof, immediately after the title of such Act, the day, month and year, when the same shall have passed, and received the royal assent: and such endorsement shall be taken to be a part of such Act, and to be the date of its commencement, when no other commencement shall be therein provided.

\* By the 44 G. III., c. 5, § 3, it is enacted, that the said clerk shall, as soon as possible after receiving the said Acts, send four copies to each member of the Legislative and Executive Councils; four copies to each of the Judges of the King's Bench, and the like number to the Attorney General, and twenty copies to each member of the present House of Assembly, to be by them distributed in such manner as will best tend to promulgate a general knowledge of the laws.

\* By the 4 G. IV., c. 14, § 2, the expense of printing the Statutes annually shall be provided for in the contingent accounts.

\* By the 1 W. IV., c. 2, § 2, all Acts of the Provincial Parliament, public or private, shall be taken notice of judicially in all Courts of Law in this Province, without being specially pleaded; and a copy of such act printed by proper authority, shall be taken as sufficient evidence.

By the 4 & 5 V. c. 24, § 50, in cases of indictment or summary conviction, the singular number or masculine gender shall be understood to include several matters as well as several persons, and females as well as males, and bodies corporate as well as individuals, unless otherwise provided or repugnant to the Act: and forfeitures shall be payable to a body corporate, if the aggrieved party.

A penal statute is to be construed according to its spirit and the rules of natural justice, not according to its very letter.—*Rex v. McIntosh*, Easter \*7 W. IV., *Cameron's Digest*, p. 55.

**ADJOURNMENT.**

When a court of sessions of *oyer and terminer*, and gaol delivery breaks up without any *adjournment*, or upon a void one, as being made without the consent of the majority of the commissioners, the commission is determined, if no time be limited for its continuance, as where it is appointed

*pro hac vice* only; but if it be granted for a certain time, or, *quoadu nobis placuerit*, it does not necessarily require any adjournment, and may be holden again on a new summons.—2 *Haw. c. 5, § 7.*

**AFFIDAVIT.**

An affidavit is an oath of some fact, testified in writing and sworn before some person who hath authority to administer such oath. The true place of habitation and true addition of the deponent must be inserted in the affidavit.—1 *Lill. Ab. 44, 46.*

An affidavit ought to set forth the matter of the *fact* only which the party intends to prove by his affidavit, and not to declare the merits of the case, of which the court alone is to judge.—21 *C. 1 B. R.*

And the matter sworn to must be *positively* set forth, with all material circumstances attending it, that the court may judge whether the deponent's conclusion be just or not.—1 *New. Abr. 66.*

Therefore, on a motion to put off a trial for want of a material witness, it must appear in the affidavit that sufficient endeavors have been made to have him at the time appointed, and that he cannot possibly be present, though he may be, on further time given.—7 *Mod. 121; Comb. 421, 422.*

When an affidavit is read in court, it ought to be filed with the proper officer, that the adverse party may see it and take a copy.—*Pasch. 1655.*

The affidavit must be made before a judge or commissioner of the court where the cause or matter is pending.—*Sty. 455.*

An affidavit improperly entitled cannot be read, as no indictment thereon will lie for perjury.—*Salk. 461.*

Affidavits in aggravation of punishment are not receivable in cases of felony.—*R. v. Ellis, 6 B. & C. 148.*

Any person making or knowingly using a false affidavit, purporting to be taken abroad before a *foreign magistrate*, for the purpose of misleading our own courts, is guilty of a *misdemeanor*, in attempting to pervert public justice, and is punishable by indictment.—*Omealy v. Newell, 8 East. 364.*

*Affidavit of being prevented by illness from attending the Sessions, [to be made by a medical man, if convenient] in order to move to continue a party upon his recognisance. (Toone.)*

County of York, } A. B., of—, in the said County, sur-  
to wit. } geon, maketh oath and saith, that C. D.,  
of —, yeoman, is confined to his house by severe illness,

and that this deponent saw the said C. D. yesterday, and verily believes he is incapable of travelling without manifest danger of his life.

Sworn, &c.

A. B.

### AFFRAY.

An affray signifies the fighting of two or more persons in some public place, to the terror of *Her Majesty's subjects*.—3 *Inst.* 158; 3 *Bl. Com.* 144; 1 *Burn. Just. Affray* 1.

An affray differs from a riot in this, that two persons only may be guilty of it; whereas *three* persons, at least, are necessary to constitute a riot.—1 *Haw. c.* 65, § 1.

Persons going armed with such dangerous and unusual weapons as will naturally cause terror to the people, are guilty of an affray; which is said to have been always an offence at common law, and is strictly prohibited by several statutes.—1 *Haw. c.* 63, § 2, 4.

A constable is not only empowered, but bound, to suppress an affray which *happens in his presence*; and he may demand the assistance of others to enable him to do so, which if they refuse, they are punishable by fine and imprisonment.—*Ibid.* 3, 13.

A justice of the peace may, by his warrant, authorise the arrest of any person for an affray, and may compel the offender to find sureties of the peace. But he cannot do this without a warrant, when the affray is out of his view.—1 *Haw. c.* 63, § 18.

This offence is in general punishable by *fine and imprisonment*, the measure of which is to be regulated by the discretion of the judges, according to the circumstances of the case.—1 *Haw. c.* 63, § 30.

#### *Affidavit to ground a Warrant to apprehend Affrayers.*

A. B., of —, hatter, maketh oath and saith, that on the — day of —, in the year of our Lord 18—, C. D., of —, labourer, E. F., of —, labourer, and G. H., of —, yeoman, did in a tumultuous manner, and with force and arms, make an affray, to the terror of Her Majesty's subjects then and there being, wherein the said A. B. was assaulted, beaten and abused, by the said C. D., E. F. and G. H., without any just or reasonable cause.

Sworn, &c.

A. B.

#### *Warrant to apprehend Affrayers.*

To the Constable of —, }  
County of York, } Whereas complaint hath been made be-  
to wit. } fore me, S. P., Esq., one of her Majesty's

justices of the peace in and for the said County, upon the oath of A. B., of —, in the said County, that (*here state the substance of the complaint as set forth in the Affidavit.*) These are therefore, in her Majesty's name, to charge and command you, forthwith to apprehend the said C. D., E. F., and G. H., and bring them before me, or some other of her Majesty's justices of the peace for the said County, to answer the premises, and to find sureties, as well to keep the peace towards the said A. B., as to appear at the next general quarter sessions of the peace, to be held at —, in and for the said County, to answer such indictments as shall be preferred against them by the said A. B. for the said offence.

Given under my hand and seal, this—day of—, 18—.

## Indictment for an Affray. (Archbold.)

County of York, } The jurors for our Lady the Queen upon  
to wit. } their oath present, that J. S., late of the  
township of —, in the county of —, labourer, and J. W.  
of the same, carpenter, on the — day of —, in the —  
year of the reign of our Sovereign Lady Victoria, with force  
arms, in the township aforesaid, in the county aforesaid, and  
being unlawfully assembled together and arrayed in a war-  
like manner, then and there, in a certain public street and  
highway there situate, unlawfully and to the great terror  
and disturbance of divers liege subjects of our said Lady  
the Queen then and there being, did make an affray, in  
contempt of our said Lady the Queen and her laws, to the  
evil example of all others in the like case offending, and  
against the peace of our Lady the Queen, her crown and  
dignity.

## AGRICULTURAL SOCIETIES.

\* By 8 V., c. 54, § 1, it is enacted, that when any agricultural society, for the purpose of importing valuable live stock or whatever else might conduce to the improvement of agriculture, shall be constituted in any district in Upper Canada, and shall make it appear, by certificate under the hand of the treasurer of such district society, that a sum not less than £25 has been actually subscribed and paid to the said treasurer by the several agricultural societies of said district; and the president of the said society shall make application, enclosing the said certificate, to the Governor, for and in support of said society, it shall and may be lawful for the Governor to issue his warrant to the Receiver General, in favour of the treasurer of the said society, for treble the sum paid or subscribed in

**Agricultural Societies.**

said district, as aforesaid : provided, that the annual sum to be granted to each district shall not exceed £250. § 2. In the event of there being county, riding, or township agricultural societies established, there shall not be more than one society in each county or riding of any district, and a proportion of the district bounty shall be granted to each county, riding, or township agricultural society, and paid to them by the district society, in proportion to the money that each county, riding, or township agricultural society shall have subscribed : Provided, that the whole sum granted to the district and county societies together, shall not exceed £250 per annum. § 3. In case of more than £50 being subscribed by the several societies in any district, said grant of £250 shall be divided to each society in proportion to their subscriptions respectively. § 4. Each society may elect its own officers and make by-laws. § 5. The treasurer's account of the receipts and expenditure of the preceding year shall, after the first year, always accompany the application for grants in aid of said societies. § 6. When county, riding, or township societies shall have been established in any district, the treasurer of such county societies shall, on or before the first day of September in each year, pay over the amount of money subscribed by said societies into the hands of the treasurer of the district agricultural society, who shall then make an abstract of the sums subscribed in said district in the following form :

*Abstract of sums of Money subscribed by the several Agricultural Societies in the ——— district, for the year 18—.*

Agricultural Societies.	Amount subscribed by each.		
	£	s.	d.
Total.....£			

These are to certify that the sum of — pounds, — shillings, have been paid into my hands, in current money of this province, by the several agricultural societies in the ——— district, as above stated.

Given under my hand at —, the — day of —, 18—.

Certified,

—, Treasurer.  
—, President.



§ 7. Monies granted to be accounted for to Her Majesty,  
 § 8. If the treasurer of any township society shall, on or before the first day of July in each and every year, pay any sum of money into the hands of the treasurer of the district or county societies, he shall be entitled to receive the same again, so soon as the legislative grant shall have been received, with a proportion of the legislative grant equal to the amount so paid, or in proportion to what shall fall to their share upon an equal division being made, in proportion to the sums paid in by the several societies in the district or county. § 9. The Secretary of each Society annually to transmit to the three branches of the Legislature, within fifteen days after the opening of Parliament, a report of its proceedings, subscriptions, amount received out of the public chest, expenses of the society, names of persons granted premiums, and such other information as may tend to the improvement of Agriculture.

By 10 & 11 V. c. 61, certain persons named therein are incorporated under the name and style of "*The Agricultural Association of Upper Canada*," with the constitution appended to the act, viz.:

## CONSTITUTION.

*First.* The title of the association to be The Agricultural Association of Upper Canada.

*Second.* Persons subscribing annually 5s. and upwards, to be members.

*Third.* Subscribers to the amount of £3 10s. and upwards, to be life members.

*Fourth.* The Association to be governed by directors, two from each district, to be appointed by the District Agricultural Societies; directors to meet annually for the election of officers and the transaction of business.

*Fifth.* Directors to elect a President, two Vice-Presidents, a Secretary and Treasurer, at their annual meeting.

*Sixth.* The funds of the Association to consist of voluntary subscriptions of the Members, fees collected at the agricultural show and contributions from the Agricultural Societies, and of any future parliamentary grant.

*Seventh.* The object of the Association to be the improvement of farm stock and produce: the improvement of tillage and agricultural implements, and other like matters; and the encouragement of domestic manufactures of useful inventions applicable to agricultural or domestic purposes, and of every branch of rural and domestic economy.

By 13 & 14 V., c. 73, § 1, a Board of Agriculture in

Upper Canada is established, to consist of ten members, five to be a quorum. § 2. The Inspector-General and Professor of Agriculture in the University, to be *ex-officio* members. § 3. Chairman to be elected annually by the Board. § 4. The other seven members to be elected as follows :— The Directors of each County Agricultural Society to elect seven persons at their first meeting, after the annual meeting; their names to be transmitted to the Provincial Secretary; and in June following, a "Board list" to be made by him of all the names on the county lists, and the seven who shall have received the highest number of votes on the county lists shall be members of the "Board of Agriculture." § 6. Retiring directors of the County Societies at the next annual meeting but one after the election of the first board and at each annual meeting thereafter, to elect two persons, as before provided for election of the first members, their names to be transmitted to the Secretary of the Board of Agriculture; and the two persons having the greatest number of County votes to be members of the Board, and their names placed on the top of the Board list; and the two members standing lowest on the Board list, shall retire unless re-elected. § 7. Any member neglecting to attend two meetings in succession (without having previously refused to act), shall cease to be a member. § 8. Board may appoint a chairman *pro tem.*, and a Secretary, and have their office in Toronto. § 9. Meetings to be held by adjournment, or upon requisition of any three members; and their necessary expenses of attendance to be paid, not exceeding £10 each per annum. § 10. Members of the Board and Presidents of the County Societies, to be Directors of the Provincial Agricultural Association. § 11. The Board to collect information upon agricultural interests, and report annually to the Legislature. § 12. And to prepare and present to the Legislature a plan for an experimental or illustrative farm, in connection with the chair of agriculture in the University at Toronto.

#### ALE-HOUSES.

By 6 W. IV. c 4, § 6, no brewer resident in Toronto or liberties, or within one mile thereof or any district town, shall sell beer by retail in a less quantity than three gallons without an ale and beer-house license, and every brewer applying for such license shall pay such sum of money not exceeding 2l. 10s. as the justices granting the same shall think fit, to be applied in the same manner as the duties on ale and beer-house licenses; any brewer selling contrary

to this act shall be subject to the same pains and penalties as persons keeping ale and beer-houses without license, to be prosecuted and applied according to the \*4 G. IV. c. 15; § 7. Prosecutions under this or any former law for vending beer, ale, cider, or other liquors not spirituous without license, shall be heard, adjudged and determined by any *two* or more justices where the parties complained of reside, or the offence was committed. § 9. Act to be in force four years.

Made perpetual by the \*3 V. c. 21.

\*By the 3 V. c. 20, § 14, all and every person or persons who shall open a house of public entertainment, or a house for the sale of ale, beer, cider or other liquors not spirituous, within this province by retail, shall take out a license for so doing; which license shall be applied for and granted in the same manner, and subject to the same regulations and restrictions as licenses are now granted to innkeepers.

§ 15. Inspectors authorized to demand and receive from the person applying for a license for vending beer, cider, or other liquors not spirituous, the like fees for issuing the same as are now by law authorized to be received for licenses issued to innkeepers.

§ 16. Justices, or police magistrates of any incorporated town, not to order or direct the inspector to receive, or the keeper of such alehouse or house of public entertainment to pay for any such license as aforesaid a greater sum than 5*l.*, nor a smaller one than 1*l.*

By 12 V. c. 81, § 31, the Municipality of each Township is authorized to make By-laws for "regulating inns, taverns, *ale-houses*, and all other places for public entertainment, within their jurisdiction, and to limit the number of them; and in all cases where there exists no other provision by law for licensing such houses, to provide for the proper licensing the same at such rates as to the Corporation of such Township may seem expedient; the proceeds of such licenses, in cases not otherwise appropriated by law, to form part of the public funds of such Township, and be disposed of as such Corporation may consider advisable.

By 13 & 14 V., c. 65, which recites that it is "expedient to vest in the municipal authorities the power of fixing the number of taverns, beer-shops, and houses of public entertainment, and prescribing the condition on which *licenses* shall be obtained, and the duties paid thereon over and above that imposed by the Imperial Act 14, G. III, c. 88," It is enacted by § 1, that so much of the acts therein mentioned (including the 3 V., c. 20), or of any other law

in force in Upper Canada as vests in any justices of the peace the power of granting certificates for licenses to keep Inns or houses of public entertainment, or of making rules for the conduct of such Innkeepers, or repealing such rules, or fixing the duties for such license, or repealing or altering any duty or sum so fixed, as may be inconsistent with any provision of this act, which is to be acted upon before the *first* day of *March* next (1850), shall be repealed; and the remaining provisions of said acts, and license duties payable under them, shall remain in force (if not inconsistent with this act) until the *first* day of March next, after which they shall be repealed, except the 7, 8, secs., 3 V. c. 20, (which relate to sale of wines, &c. on board steamboats,) and by § 4, the Municipality of each Township, or incorporated Village, the Town Council of incorporated Towns, and the Common Council of each City in Upper Canada are authorized at any time after the passing of this act, to make By-laws—1, for limiting the number of Inns, or houses of public entertainment in such Township, Village, Town or City, for which licenses shall be issued to be in force after the *last* of February, 1850, or for prohibiting licenses for any house in their respective municipalities, and for fixing the terms and conditions which shall be previously complied with; the description of house and accommodation, and the security to be given for observing By-laws, *and the sum* to be paid for such license over and above the imperial duty; for regulating such inns and houses of public entertainment, and for imposing penalties for contravention of By-laws; for *similar* purposes with respect to *ale and beer houses*, and other houses for the reception and entertainment of the public, where fermented or other manufactured liquors are sold to be drunk therein. § 5. At the annual election of Councillors in Townships (not divided into wards) and incorporated Villages, *three* inspectors to be elected for each, and in each ward of any Township (divided into wards), or of any such Town or City, *one* such inspector of houses of public entertainment.

For their powers and duties see *post* title "Inns," "Intemperance."

### ALIENS.

An Alien is one, generally speaking, who is born in a foreign country out of the allegiance of the king.—4 *Bl. Com.* 342.

But by 7 Ann, c. 5; 4 G. II. c. 21; and 13 G. III. c. 21; all children born out of the king's legiance, whose *fathers*

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or *grandfathers* by the father's side were natural-born subjects, are deemed to be natural-born subjects themselves, to all intents and purposes; unless their said ancestors were attainted or banished beyond sea for high treason; or were, at the birth of such children, in the service of a prince at enmity with *Great Britain*.

The children of aliens born in the king's dominions, are natural-born subjects, unless the alien parents are acting in the realm as enemies; for it is not *cælum nec solum* which gives them the rights of *Englishmen*, but their being born within the allegiance and under the protection of the king.—7 Co. 18 A.; 1 Bl. Com. 374.

When an alien is indicted for any crime, the jury should be one half foreigners, if so many are found in the place; but this privilege does not hold in treason, since aliens are holden to be not the proper judges of what is a breach of the allegiance due to a *British Sovereign*.—4 Bl. Com. 352.

An alien residing in this country, may be indicted for high treason, if he aid even his own countrymen in acts of hostility to this kingdom.—1 How. c. 17. § 5; Fost. 185. Salk. 46; 2 Ld. Ray. 282; East. P. C. 53.

\* By 9 G. IV. c. 21, the preamble of which recites, that it is expedient to remove by law doubts that may have arisen as to the civil rights and titles to real estate, to certain persons therein mentioned, and to provide by some general law for the naturalization of such persons, not being by law entitled to be regarded as natural-born subjects, as were actually domiciled in this province, it is therefore enacted, as follows:—"that all persons who have held any public office in the province, under the great seal or privy seal of the province, or under the sign manual of the Governor, and all persons who have taken the oath of allegiance, or made affirmation of allegiance to his Majesty or his predecessors, before any person duly authorised to administer such oath or affirmation; and all persons who had their settled place of abode in this province before the year 1828, and are still resident therein, shall be, and are thereby admitted and confirmed in all the privileges of British birth and natural-born subjects: provided, that no one (except females) who has not taken the oath, or made the affirmation of allegiance, shall be entitled to the benefits of this act, unless he shall take the said oath or affirmation before some duly authorised person."

And by § 2 it is further enacted, "that all persons actually domiciled in this province on the 1st March, 1828, not being of the description before mentioned; who shall

have resided, or shall continue to reside therein, or in some other part of his Majesty's dominions, for the space of seven years continually, without having been during that time stated resident in any foreign country, shall be deemed and taken to be natural-born subjects, as if they had been born in this province: provided, that no one of the persons described in this clause, (except females) who, at the passing of this act, has been resident in his Majesty's dominions seven years continually, as aforesaid, shall be entitled to the benefits of this act) unless, within three years after the passing of this act, (if at the passing of the act he shall be sixteen years of age or upwards, or if not of that age, then within three years after he shall be of that age,) he shall take and subscribe the oath in the schedule to this act, marked A, or affirm to the same effect, before the register, or deputy register of some county in this province: and that no one of the persons described in this clause, who has not been resident, as aforesaid, seven years continually in his Majesty's dominions, shall be entitled to the benefits of this act, unless within three years after he shall have completed a stated residence of seven years continually, as aforesaid, in his Majesty's dominions, (if at the expiration of such residence he shall be of the age of sixteen years or upwards, or, if at that time not of that age, then within three years after he shall have attained that age) he shall take and subscribe such oath or make such affirmation."

#### *Form of the Oath.*

##### A.

"I do swear, (or being one of the persons allowed by law to affirm in civil cases, do affirm,) that I have resided seven years in his Majesty's dominions, without having been during that time resident in any foreign country: and that I will be faithful and bear true allegiance to the Sovereign of the United Kingdom of Great Britain and Ireland, and of this province, as dependent thereon."

\* By 1 W. IV. c. 8, the period of three years mentioned in the last act for taking the oath, is extended to four years from the passing of this act, and thence to the end of the next session.

\* By 2 V. c. 20, § 1, so much of the second clause of \* 9 G. IV. c. 21. as limits the time for taking the oath therein prescribed, be revived and extended to two years from and after the passing of this act. [11th May, 1839.]

By 4 & 5 V. c. 7, all aliens actually residing within this province on the 10th February, 1841, and who were so

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resident continually for seven years next before that day, or shall have been continually resident for seven years from the said day, or from their first residence in this province before that day, shall be deemed and taken to be natural-born subjects of her Majesty, to all intents and purposes whatsoever: provided that residence within Lower Canada or residence within Upper Canada shall be deemed residence within this province for the purposes of this act. § 2. Temporary absence from the province, without renewal of allegiance to any foreign state, or actual removal of domicile, shall not be held an interruption. § 3. Every person naturalized under this Act shall, from the commencement of his residence, be deemed qualified to hold real estate in this province or the late provinces. § 4. Provided that no such alien (excepting females) who, at the passing of this Act, has been resident within this province seven years continually, shall be entitled to the benefit of this Act, unless within twelve months after the passing thereof he shall take the oath and make the declaration in the schedule, or, being one of the persons allowed to affirm, shall make affirmation to the same effect before some person whom the Governor, Lieutenant Governor, or person administering the government, shall, by commission under the great seal, empower to administer the same; and no such alien who having, at the passing of this Act, been for seven years continually resident within this province, (except as before excepted), shall be entitled to the benefit of this Act, unless within twelve months after he shall have completed such seven years' residence he shall take such oath or make such affirmation. § 5. Minors, having completed such stated residence, entitled to the benefit of the Act, upon taking the oath or making such affirmation within twelve months after they shall have attained the age of sixteen years. § 6. False swearing or false affirmation to be deemed perjury, and the offender, in addition to any other punishment authorised by law, shall forfeit all the privileges under the Act; but the rights of others, in respect to estates, not to be affected, unless such parties were cognizant of the perjury. § 7. Persons duly authorised may administer the oath or affirmation required, to any person above sixteen who shall desire to take the same, and shall make such declaration as will, if true, entitle him to the benefit of this Act, and shall keep books of registry, containing the oath or affirmation and declaration, which shall be signed or marked by the party. § 8. Duplicate books to be kept, containing the actual signatures or marks of the persons subscribing, and,

on or before the 31st day of December in each year, one of them shall be transmitted by the person in charge to the registrar of the province and the other retained, and both shall be public records. § 9. If either shall be lost or destroyed, it shall be supplied by a copy on oath from the other. § 10. A copy or extract from any such book or registry of the whole entry, made in respect to any person whose name is recorded therein, certified by the person in charge, shall be sufficient evidence of naturalization of the person described. § 11. The books transmitted to be verified by the commissioner or his deputy; § 12. Under the penalty of £200, to be recovered by information in any superior court of record. § 13. Alphabetical lists to be kept by the commissioners and registrar, and open for inspection, on payment of one shilling, search. § 14. A fee of one shilling and three-pence to be charged for the oath or affirmation, and the like sum for the search and a certified copy. § 15. Any alien who, on the 10th February, 1841, was domiciled in this province, dying before the period limited by the Act for taking the oath, shall be deemed to have been a natural-born subject, so far as regards holding and departing real estate. § 16. This Act not to repeal or affect the 54 Geo. III. c. 9, or any proceedings under the same, or any law now in force for the naturalization of aliens. § 17. Aliens by birth, but naturalized in one part of the province, to be entitled to the same privileges throughout. § 18. Aliens under sixteen years of age, resident in the province on the 10th February, 1841, not to be disturbed in the possession or precluded from recovering real estate. § 19. Titles derived through aliens, before the passing of this Act, not to be disturbed. § 22. Claimants next entitled to an alien heir, in possession and having made improvements, or who shall have actually sold or contracted to sell real estate, the provisions of this Act not to invalidate any right or title to such estate.

## SCHEDULE.

## Oath.

I do swear (or, solemnly affirm, *as the case may be,*) that I was actually resident within the province of Canada, on the tenth day of February, in the year of our Lord one thousand eight hundred and forty-one, at the place named in the declaration to which I have set my name in this register; that I was continually resident in the said province for a term of seven years, in which the said day was included; that all the other particulars in the said declara-

tion are true to the best of my knowledge and belief, and that I do truly believe myself entitled to be admitted to all the privileges of British birth within the said province, under the provisions of an Act of the Legislature thereof passed in the fifth year of the reign of her Majesty Queen Victoria, and intituled, *An Act to secure to and confer upon certain inhabitants of this Province the civil and political rights of natural born British subjects*, and I do further swear (or solemnly affirm, as the case may be,) that I will be faithful and bear true allegiance to the Sovereign of the United Kingdom of Great Britain and Ireland and of this province, as dependent thereon. So help me God.

**Declaration.**

Name in full.	Residence on 10th February, 1841.	Present Residence.	Date of the expiration of the seven years residence.	Whether the party was or was not under 16 years of age at the date named in the next preceding column, and if he was, then the date at which he attained that age.	Signature.	Date of Registry.	No. of Registry.

*See also 9 Vic. c. 107.*

A conveyance in fee to an alien is not void, but he holds for the benefit of the crown, and is entitled, as against all others, until the land is seised into the hands of the Queen on office found; and if a subject be a trustee for an alien, he has the legal estate and the Queen is entitled to the profits; and a person claiming through an alien may have a good title, although the alien himself would hold only for the benefit of the crown; and *semble*, a person claiming lands under a sheriff's deed sold at the suit of an alien, is entitled to recover in ejectment, notwithstanding stat. 5, G. II., it being necessary to take the objection of alienage, if available at all, before execution executed.—*Cameron's Digest*, p. 5.

A person who was born in the United States before the revolution, and has continued to reside there since, is an alien, and cannot maintain an ejectment in this country.—*Ib.*

**ALLEGIANCE.**

Allegiance is the tie which binds the subject to the King, in return for the protection which the king affords the sub-

ject.—1 *Bl. Com.* 396. And there is an implied, original and virtual allegiance owing from every subject to his sovereign, although the subject never swore any oath or allegiance in form.—2 *Inst.* 121; 1 *Bl. Com.* 368—which, upon the death of the king in actual possession of the crown, is due to his heir and successor before his coronation.—3 *Inst.* 7; 1 *Hale*, 61, 102; 1 *Haw.*, c. 17, § 19.

Allegiance is of two sorts, the one *natural*, and the other *local*; the former being perpetual, the latter only temporary.

*Natural* allegiance is such as is due from all men born within the king's dominions immediately upon their birth; and this cannot be forfeited, cancelled or altered by any change of time, place or circumstance, nor by anything but the united concurrence of the legislature.—1 *Bl. Com.* 359; 2 *P. Wm.* 124; 1 *Hale*, 68, 96; *Fst.* 7.

*Local* allegiance is such as is due from an alien or stranger born, for so long a time as he continues within the king's dominions and protection; and this ceases the instant such stranger transfers himself from this kingdom to another.—1 *Bl. Com.* 370.

#### *Oath of Allegiance.*

I, A.B. do sincerely promise and swear, that I will be faithful and bear true allegiance to her Majesty Queen Victoria, and her will defend to the utmost of my power against all traitorous conspiracies and attempts whatsoever which shall be made against her person, crown and dignity; and I will do my utmost endeavour to disclose and make known to her Majesty, her heirs and successors, all treasons and traitorous conspiracies and attempts which I shall know to be against her, or any of them; and all this I do swear, without any equivocation, mental evasion, or secret reservation, and renouncing all pardons and dispensations from any power or persons whomsoever to the contrary. So help me God.

#### AMENDMENT.

\* By 1 Wm. IV. c. 2, it is enacted, that any judge of any court of oyer and terminer and general gaol delivery, (if such court or judge shall think fit) may cause the record on which any trial may be pending before any such court, in any indictment or information for any misdemeanor, when any variance shall appear between any matter in writing or in print produced in evidence and the recital or setting forth thereof upon the record whereon the trial is pending, to be forthwith amended in such particular by some officer of the court.

## AMNESTY.

By 12 Vic. c. 13, a free pardon is granted to all persons in regard to the rebellion in 1837 and 1838; and by § 2. all lands and tenements, goods and chattels, forfeited to the crown, are restored to the offender, excepting those actually seized and sold under lawful authority, in consequence of any such forfeiture or attainder, by any public officer or minister of justice; and by the same clause, *corruption* of blood, and forfeiture wrought by such attainder, are taken away.

## APPEAL.

Formerly, an appeal against a conviction lay in cases only where it was expressly given by statute; but the law in this respect has been recently altered, and now appeal lies in all cases, under the 13 & 14 V. c. 54, which enacts as follows, viz.:

That from and after the passing of this act, any person, complainant or respondent who shall think himself aggrieved by any conviction or decision before any one or more justices of the peace, mayor or police magistrate, in any matter cognizable by them, not being a crime, may appeal to the next court of general quarter sessions of the peace which shall be holden not less than twelve days after the day of such conviction or decision, for the county wherein the cause or complaint shall have arisen: *Provided* such person shall give to the other party, or leave with the convicting magistrate for him, a notice in writing of such appeal, and of the cause and matter thereof, within *four* days after such conviction or decision, and eight days before such sessions, and shall also either remain in custody until such sessions, or enter into a recognizance with two sufficient sureties before a justice of the peace, conditioned to appear at the said sessions and try such appeal, and to abide the judgment of the court thereupon, and to pay such costs as shall be by the court awarded; and upon such notice being given and recognizance entered into, the justice before whom the same shall be entered into shall liberate such person if in custody, and the court at such sessions shall hear and determine the matter of such appeal, and make such order therein, with or without costs to either party, as to the court shall seem meet; and in case of the dismissal of the appeal, or the affirmance of the conviction, shall order and adjudge the offender to be punished according to the conviction, and to pay such costs as shall be awarded, and shall, if necessary, issue process for enforcing such judgment. § 2. The court of quarter sessions, at the request of either appellant or respondent, shall impanel a jury to try the matter on which such decision may have been made, and administer to such jury the following oath: "You do solemnly swear that you will well and truly try the matter of the complaint of C. D. against E. F., and a true verdict give, according to the evidence—So help you God."

And the court, on the finding of such jury, shall thereupon give such judgment as the circumstances of the case may require; not, however, to exceed the amount of penalty or period of imprisonment that might be imposed or awarded under any law giving cognizance

to the said justice or justices, mayor or police magistrate. § 3. Any appellant may abandon the appeal by giving the opposite party notice of such intention in writing six days before the sessions; and thereupon such convicting justice may tax the respondent's additional costs (if any), which shall be added to the original costs, and proceed on the original conviction or decision in the same manner as if no appeal had been had thereon.

On an appeal to the quarter sessions, under the \*4 Wm. IV. c. 4, evidence may be received which was not offered to the convicting justices.—*Cameron's D. p. 71.*

*Notice of Appeal. (Archbold.)*

County of —, } To — of — in the said —.  
to wit: } This is to give you [and each and every of you] notice, that I, C. D., do intend, at the next general quarter sessions of the peace to be holden in and for the said county, at — in the said county, to appeal against a certain conviction of me, the said C. D., by J. P. esquire, one of her Majesty's justices of the peace for the said county, for having, as is therein and thereby alleged [on — &c. at — &c. — &c. stating the offence,] and that the cause and matter of such appeal are [that I am not guilty of the said offence] and that [stating any other cause of appeal the party may have]; of all which premises you [and each and every of you] are hereby desired to take notice.

Dated this — day of — &c.

Witness, E. H.

C. D.

*Recognizance in the usual form. See post title "Recognizance."*

*Condition.*

Whereas, by a certain conviction, under the hand and seal of —, one of her Majesty's justices of the peace for the county aforesaid, the said C. D. is convicted; for that he on &c. [stating the offence]. And whereas the said C. D. hath given notice unto — [within — days after such conviction, and — clear days before the next general quarter sessions of the peace,] of his intention to appeal against the said conviction, and of the cause and matter thereof. Now the condition of this recognizance is such, that if the above bounden C. D. shall personally appear at the next general quarter sessions of the peace to be holden at — in and for the said county, and shall then and there try such appeal, and abide the judgment of the said court of quarter sessions thereupon, and pay such costs as shall be by the said court awarded, then this recognizance to be void.

Taken and acknowledged before me.

J. P.

**APPEAL (COURT OF).**

By the 12th Vic. c. 63, § 1, a Court of Common Pleas is established in and for Upper Canada, with a chief justice and two puisne judges presiding therein. § 3. The presiding judges of the Court of Queen's Bench to consist of a chief justice and two puisne judges. § 38. A Court of Judicature established, to be called the "Court of Error and Appeal." § 39. Such court to be composed of the judges



of the Court of Queen's Bench, Common Pleas and Chancery: Sittings at Toronto. The Chief Justice of the Queen's Bench to preside therein; or in his absence the judge next entitled to precedence. § 40. Court of Appeal to have an appellant, civil and criminal jurisdiction throughout Upper Canada; and appeals thereto to lie from judgments of the Court of Queen's Bench and Common Pleas, and from judgments, orders and decrees in Chancery; appellant to give security in 100*l.* to the satisfaction of the court from whose judgment appeal is made, to prosecute such appeal, and pay costs and damages awarded, in case judgment or decree affirmed—and upon perfecting such security, execution to be stayed in the original cause, except as follows:

*Firstly.* If the appeal be from a judgment, order or decree for the payment of money, the perfecting of the security shall not stay proceedings, unless the appellant give further security, in case judgment affirmed, for payment of the amount, or so much thereof as to which the judgment shall be affirmed, and all damages awarded against the appellant.

*Secondly.* If the judgment or decree appealed from direct the assignment or delivery of documents or personal property, judgment not to be stayed, unless the things directed to be assigned or delivered, be brought into court or placed in the custody of the proper officer, or unless security be given in such sum as the court appealed from shall direct, that appellant will abide the appeal.

*Thirdly.* If the judgment or decree appealed from, direct the execution of a conveyance or other instrument, judgment not to be stayed until such instrument shall be executed and deposited with the proper officer.

*Fourthly.* Where the judgment or decree directs the sale or delivery of possession, or real property, or chattels real, execution not to be stayed, unless proper security given that during the possession by the appellant no waste shall be committed, and for payment of the *interim* use and occupation of the property.

*Fifthly.* When the judgment or decree is for the sale of property, and payment of deficiency, security also to provide for payment of such deficiency.

§ 46. The judgment of said Court of Error and Appeal to be final in all cases not exceeding 1000*l.* value; otherwise, appeal given to Her Majesty in Privy Council. No such appeal allowed until appellant shall have given security in 500*l.* to prosecute such appeal, &c.; and upon such security being given, execution to be stayed in the original cause.

## APPRENTICES.

An apprentice is one under age, who is bound by indenture to serve his master or mistress for a term of years during his minority.

The 5 Eliz. c. 4, commonly called the Statute of Apprenticeship, provides and enacts, that all indentures for less term than seven years shall be void (a).

If this regulation be not complied with, the indentures are voidable at the parties' election—1 *Anstr.* 256; 6 *Esp. R.* 8.

It has however been decided, that as between the parties themselves the indenture is not absolutely void, but *only voidable*, and that it must be avoided in a proper manner—*Rex v. Evered, Caldecott's Rep.* 26; 1 *Botts.* 530, 1; 6 *Term Rep.*; and when a party is bound as an apprentice for less than seven years, no third party can avail himself of this deviation from the statute, so as to protect him from liability to an action for enticing away such apprentice—6 *Term Rep.* 652; 7 *Term Rep.* 310, 314; and it is settled in the case of *Rex v. St. Nicholas*, that a binding for four years gives a settlement; and Aston, justice, said, "supposing the indenture voidable, I cannot conceive that the apprentice's *running away* can avoid them; had he served regularly, and during such service declared his intention to depart, it might have been different; here he would make use of his offence in order to avoid the punishment that attended it, but it is too late to do it before a justice, when charged with a crime. And Willes and Ashhurst, justices, were of the same opinion—1 *Bott.* p. 525, pl. 709.

Again, in the case of *St. Nicholas v. St. Peters, (Burr. Sett. cases)* the same question was fully argued, and Lord Hardwick, chief justice, in an elaborate argument, said, "I am of opinion that it does not make this Indenture void, but only voidable, if the parties themselves think fit to take advantage of it;" and three other judges concurred in opinion.

It being, therefore, clearly established as law, that an apprenticeship may be good for a less term than seven years, until avoided by the parties in a legal and proper

(a) An Indenture of Apprenticeship, contrary to the provisions of 5 Eliz. c. 4, is not void, but voidable; and *semble*, that statute is not in force in this province. *Nash v. Doyle, Hill. 1 W. IV.*; *Cameron's Digest*, p. 6. The case cited was one of a civil nature, upon an action brought for breach of contract. The question of criminal jurisdiction under the statute did not arise, and may therefore be presumed to be undecided. The statute has been held in England to relate to every description of apprentice, whether bound for seven years or a less period.—1 *Soud.* 316, n. 3; 1 *Str.* 663; 1 *Nolan*, 344.—Ed.

manner; until this be done, such apprentices are clearly within the operation of the various statutes relating to apprentices generally.

It has been held not an indictable offence to entice away an apprentice from his master, on the ground that it is not an act of a public nature, but a mere private injury, and therefore the proper subject of an action—*Rex v. Daniel*; 6 Mod. 182; *Rex v. Collingwood*, 1 Salk. 380.

At common law, an apprentice stealing his master's goods is guilty of felony, if they were simply under his charge: but not so, if entrusted to him to keep for his master, this being a breach of trust only—1 H. P. C. 505. This however was made felony by stat. 21 H. VIII. c. 7. in apprentices [not under eighteen years of age] embezzling to the value of forty shillings (a). It is a misdemeanor to solicit him to steal his master's goods though no act be done by him as to the stealing—*Rex v. Higgins*, 2 East. 5; *Rex v. Collingwood*, *contra*.

It is an indictable offence to refuse or neglect to supply necessaries to a child, a servant, or apprentice, whom a person is bound by duty or contract to provide for, if such child be of tender years and unable to provide for itself—*R. v. Friend*, Russ. & Ry. 20.

The apprenticeship may be determined by the death of the master, or the apprentice coming of age.—*Ex parte Davis*, 5 Term Rep. 715; *Chitty App. L.* 79.

## Differences between the Master and Apprentice.

The master is allowed by law, with moderation, to chastise his apprentice.—*Dalt.* c. 58.

But if the master and his apprentice cannot agree, they may proceed upon any one of the following statutes, applicable to the facts and circumstances of the case:

By 5 Eliz. c. 4, § 35, if any master shall misuse or evil entreat his apprentice, or the apprentice shall have any just cause to complain, or the apprentice do not his duty to his master, then the master or apprentice being grieved and having cause to complain, shall repair unto one justice of the peace within the county, or to the mayor or other head officer of the city, town corporate, market town, or other place where the said master dwelleth, who shall by his wisdom and discretion take such order and direction between the master and his apprentice as the equity of the case shall require.

And if for want of good conformity in the master, the justice of peace or the mayor or head officer cannot com-

(a) See also post title "Embezzlement."

pound and agree the matter between him and his apprentice, then the justice, or the mayor or other head officer shall take bond of the master to appear at the next sessions then to be holden in the county, or within the city, town corporate or market town, to be before the justices of the said county, or the mayor or head officer of the town corporate or market town, if the master dwell within any such.

And upon his appearance and hearing of the matter before the justice, or the mayor or other head officer, if it be thought meet unto them to discharge the apprentice of his apprenticeship, then the justices, or four of them at least, whereof one to be of the *quorum*, or the mayor or head officer, with the consent of three other of his brethren, or men of best reputation within the city, town corporate or market town, shall have power by authority hereof, in witness whereof their hands and seals, to pronounce and declare that they have discharged the apprentice of his apprenticeship and the cause thereof; and the writing so being made and enrolled by the clerk of the peace or town clerk amongst the records that he keepeth, shall be a sufficient discharge for the said apprentice against his master, his executors and administrators, the indenture of apprenticeship or any law or custom to the contrary notwithstanding.

And if the default shall be found to be in the apprentice, then the justices, or the mayor or other head officer, with the assistance aforesaid, shall cause such due correction and punishment to be ministered unto him, as by their wisdom and discretion shall be thought meet.

By 5 Eliz. c. 4, § 47, if any servant or apprentice of husbandry, or of any art, science or occupation aforesaid, unlawfully depart or flee into any other shire, it shall be lawful to the justices of the peace and to the mayors, bailiffs and other head officers of cities and towns corporate, for the time being justices of the peace there, to make and grant writs of *capias*, so many and such as shall be needful, to be directed to the sheriffs of the counties or to other head officers of the places whither such servants or apprentices shall so depart or flee to take their bodies, returnable before them at what time shall please them, so that if they come by such process that they be put in prison till they shall find sufficient surety well and honestly to serve their masters, mistresses or dames, from whom they so departed or fled, according to the order of the law.

By 20 G. II. c. 19, § 3, it shall and may be lawful to and for any *two* or more justices of the peace of the county, riding, city, liberty, town corporate or place where such

master or mistress shall inhabit, upon any complaint or application by any apprentice, upon whose binding out no larger a sum than *five pounds* of lawful British money was paid, touching or concerning any misusage, refusal or necessary provision, cruelty or other ill-treatment of or towards such apprentice, by his or her master or mistress, to summon such master or mistress to appear before such justices at a reasonable time, to be named in such summonses; and such justices shall and may examine into the matters of such complaint, and upon proof thereof made upon oath to their satisfaction, (whether the master or mistress be present or not, if service of the summonses be also upon oath proved,) the said justices may discharge such apprentice by warrant or certificate under their hands and seals, for which warrant or certificate no fee shall be paid.

And by § 4, it shall be lawful to and for such justices, upon application or complaint made upon oath by any master or mistress, against any such apprentice, touching or concerning any misdemeanor, miscarriage or ill-behaviour in such his or her service, (which oath such justices are hereby empowered to administer,) to hear, examine and determine the same, and to punish the offender by commitment to the house of correction, there to remain and be corrected and held to hard labour for a reasonable time, not exceeding *one calendar month*, or otherwise by discharging such apprentice in manner and form before mentioned.

By § 5 provided, that if any person or persons shall think himself, herself or themselves aggrieved by such determination, order or warrant, of such justice or justices as aforesaid, (save and except any order or commitment,) he, she or they may appeal to the next general quarter sessions of the peace to be held for the county, riding, liberty, city, town corporate, or place where such determination or order shall be made, which said next general quarter sessions is hereby empowered to hear and finally determine the same, and to give and award such costs to any of the respective persons, *appellant* or *respondent*, as the said sessions shall judge reasonable, not exceeding *forty shillings*; the same to be levied by distress and sale.

By § 6 and 7 it is also provided, that no *certiorari* or other process shall issue or be issuable to remove any proceedings whatsoever had in pursuance of this Act into any of her Majesty's courts of record at *Westminster*.

By 6 G. III. c. 25, if any apprentice (except such whose master shall have received with such apprentice the sum of *ten pounds*) shall absent himself from his master's service

before the term of his apprenticeship shall be expired, every such apprentice shall, at any time or times thereafter, whenever he shall be found, be compelled to serve his said master for as long a time as he shall have so absented himself from such service, unless he shall make satisfaction for the loss he shall have sustained by his absence from his service, and so from time to time, as often as any such apprentice shall, without leave from his master, absent himself from his service before the term of his contract shall be fulfilled; and in case any such apprentice shall refuse to serve as hereby required, or to make such satisfaction to his master, such master may complain upon oath to any justice of the peace of the county or place where he shall reside, which oath such justice is hereby empowered to administer and to issue a warrant under his hand and seal for apprehending any such apprentice, and such justice, upon hearing the complaint, may determine what satisfaction shall be made to such master by such apprentice, and in case such apprentice shall not give security to make such satisfaction, according to such determination, it shall and may be lawful for such justice to commit every such apprentice to the house of correction for any term not exceeding *three months*.

By § 3, such application must be made within seven years after the end of the term of the apprenticeship.

And by § 5, any party aggrieved may appeal to the next general quarter sessions, giving six days' notice to the justice, and entering into a recognizance within three days after such notice, with sufficient surety, to try such appeal and abide the order of and pay such costs as should be awarded by the sessions.

Upon these acts Mr. Chitty, in his treatise on the law relative to apprentices, observes, that a more extensive power is given to the sessions than to justices in the first instance; that under the statute 5 Eliz. c. 4, *one justice* is only constituted a mediator, and has no power to proceed unless the master agree to be bound by his determination, and if he do not, the only course is to resort to the *sessions*; but if the master agree, though the apprentice do not, the magistrate may, by order under his hand and seal, direct him to be discharged, for no option is given by the statute to the apprentice, but only to the master.

The power given over indentures of apprenticeship to two magistrates, by the 20 G. II., c. 19, is confined to *apprentices where the premium does not exceed five pounds*.

Besides the power of *discharging*, the sessions have, by the 85 § of 5 Eliz. c. 4, power to *cause such due correction and*

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*punishment* to be ministered unto the apprentice as they may think fit, and by virtue of this clause they may commit the apprentice; and Dr. Burn observes, that this being left indefinite, it seems most apposite that the justices commit the apprentice to the house of correction for a time, to be kept to hard labour, or otherwise corrected, as the nature of the offence may require; but that this clause in the act does not restrain but enlarges the power of magistrates over apprentices beyond the power given them over masters, whom the justices cannot punish, and the magistrates may inflict corporal punishment, or discharge an apprentice at their discretion]

*Proceedings at Sessions under 5 Elizabeth.*

An order of discharge may be made upon the application of either party; for an apprentice may be discharged from a bad master, and a bad apprentice from his master—1 *Saund.* 315, 16, 313, n. 2.

But the sessions cannot discharge without setting forth some cause in their order—1 *Bott.* 577; 2 *Str.* 1013; *Id.* 704; 1 *Bott.* 576.

The usual causes for which the apprentice complains against the master are cruelty and misusing his contract, either by neglecting to instruct him, or the like.

And when the master applies to get rid of his apprentice it is generally upon the ground of incorrigible behaviour.

There is no power to discharge for sickness, as, "where the apprentice was lame and in the surgeons' opinion incurably afflicted," for the master takes him for better or worse, and is to provide for him in sickness and in health—1 *Str.* 89; 1 *Bott.* 574.

The order must be under the hands and seals of four justices, and enrolled as the act directs, or the superior courts will set it aside.—1 *Saund.* 316, n. 5; 2 *Salk.* 470; 1 *Bott.* 572; 1 *Str.* 99.

The power of discharge is confined, in counties, to four justices at the least, and must be made at a general sessions, and not a private sessions, or the order may be set aside.—1 *Skin.* 89; 1 *Bott.* 572.

It has been decided and settled, that the justices have power to order restitution of the premium received with the apprentice, or such part of it as they may think fit, as an incident to their authority to discharge.—1 *Saund.* 313, n. 3, *cites* 1 *Salk.* 67, 68; 2 *Salk.* 491, S. C.; *Skin.* 108; 1 *Bott.* 571, 576, *acc.*; 1 *Str.* 79, *contra*, and see the proceedings in 2 *Barnard K. B.*, 244, 296, and *Chitty on App. Laws*, 107.

*If against the Master.*

Although the 5 Eliz. requires the discharge to be made on

the master's appearance, the court held that the act must have a reasonable construction, and the sessions might proceed in the master's absence, otherwise, if he ran away, the apprentice could not be discharged.—2 Salk. 491 ; 1 Bott. 572.

*Common form of an Indenture of Apprenticeship.*

This Indenture witnesseth, that A. B. of the age of — years, the son of B. C. of the township of — in the county of —, yeoman, by and with the consent of his said father, doth put himself apprentice to C. D. of the city of Toronto, shoemaker, to learn his art, and with him, after the manner of an apprentice, to serve, from the day of the date of these presents, unto the full end and term of — years from thence next following, to be fully complete and ended ; during which term the said apprentice his master faithfully shall serve, his secrets keep, his lawful commands everywhere gladly do : he shall do no damage to his said master, nor see to be done of others, but to his power shall let or forthwith give warning to his said master of the same : he shall not waste the goods of his said master, nor lend them unlawfully to any : he shall not commit fornication nor contract matrimony within the said term : he shall not play at cards, dice tables, or any other unlawful games, whereby his said master may have any loss with his own goods or others, during the said term, without license of his said master : he shall neither buy nor sell : he shall not haunt taverns or play-houses, nor absent himself from his said master's service day or night, unlawfully, but in all things as a faithful apprentice he shall behave himself towards his said master and all his, during the said term. And the said C. D. in consideration of the faithful services of the said apprentice, and of the sum of £ — of lawful and current money of the province of Canada, to him in hand paid by the said B. C. at or immediately before the execution hereof, the receipt whereof is hereby acknowledged, his said apprentice in the art of a shoemaker which he useth, by the best means that he can, shall teach and instruct, or cause to be taught and instructed, finding and providing unto the said apprentice sufficient meat, drink, lodging and all other necessaries, during the said term, (and moreover, here add any special contract for wages, in case any are to be paid to the apprentice), and for the true performance of all and every the said covenants and agreements, each of the said parties bindeth himself unto the other, and others of them firmly by these presents. In witness whereof, the parties above named to these indentures interchangeably have put their hands and

seals, at the city of Toronto aforesaid, the — day of — in the year of our Lord 18—.

Signed, sealed, and delivered }	A. B.	[L. S.]
in the presence of — }	B. C.	[L. S.]
E. K. Schoolmaster.	C. D.	[L. S.]

*Summons of the Master for misusing his Apprentice, on 5 Eliz. c. 4, (Burn).*

County of —, } To the Constable of the Township of —.  
to wit: }

Whereas complaint and information hath been made unto me —, one of her Majesty's justices of the peace in and for the said county, by A. B., apprentice to C. D., of —, in the said township, shoemaker, that the said C. D. hath misused and evil entreated him the said A. B., *(by cruel punishment, and beating him the said A. B. without just cause, and by not allowing unto him sufficient meat, drink, apparel, or as the case may be)*. These are, therefore, in her Majesty's name, to command you to summon the said C. D. to appear before me, at the house of —, in the said township, on — the — day of — at the hour of — in the afternoon of the same day, to answer unto the said complaint, and to be further dealt with according to law. Herein fail you not.

Given under my hand and seal, the — day of —, &c.

*Summons of the Apprentice on complaint of the Master, on 5 Eliz. c. 4, (Burn).*

County of —, } To the Constable of —.  
to wit: }

Whereas complaint and information hath been made unto me —, one of her Majesty's justices of the peace in and for the said county, by C. D. of —, in the said county, shoemaker, that A. B., now being an apprentice to him the said C. D., is negligent, stubborn, disorderly *(or as the case may be)* and doth not his duty to him his said master. These are, therefore, to command you to summon the said A. B. to appear before me at —, in the said township, on the — day of — at the house of —, in the afternoon of the same day, to answer the said complaint, and to be further dealt with according to law. Herein fail not.

Given under my hand and seal, &c.

*Form of Recognizance to appear at the Sessions.*

See the usual form—title "Recognizance."

The condition of the above recognizance is such, that if the above bounden C. D. shall and do appear at the next general quarter sessions of the peace to be holden in and for the county

of York, and then and there answer to a complaint to be preferred against him by A. B. his apprentice, and not depart the court without leave, then this recognizance to be void.

Taken and acknowledged, &c.

*Order of discharge by four Justices at the Sessions, on the Eliz. c. 4, § 55, (Burn).*

County of —, } At a general quarter sessions of the peace,  
to wit: } holden at —, in and for the said county, the  
— day of — in the — year of the reign of our Sovereign  
Lady Victoria, by the grace of God, of the United Kingdom of  
Great Britain and Ireland, Queen, defender of the faith, and so  
forth, before — justices of our said Lady the Queen, assigned  
to keep the peace in the said county, and also to hear and deter-  
mine divers felonies, trespasses and other misdemeanors in  
the said district committed, and of the quorum—it is ordered  
as followeth :

Upon the petition of A. B. apprentice to C. D. of — in the  
said county, shoemaker, to be relieved, upon certain neglects  
of the said master in instructing him in his trade, and in mis-  
using and evil entreating the said apprentice by cruel punish-  
ment (*or as the case may be*). And the said master havi-  
likewise appeared, upon his recognizance taken before J. P.  
Esquire, one of the said justices, to answer to the complaint  
of the said petitioner, and having proved nothing whereby to  
clear himself of the said complaint; but on the contrary, the  
said A. B. having given full proof of the truth of the said com-  
plaint, to the satisfaction of the said court, we therefore, whose  
hands and seals are hereunto set, being four of the said jus-  
tices, and of the quorum, do hereby order, pronounce and de-  
clare, that the said apprentice shall be, and is hereby discharged  
and freed from his said apprenticeship. And this is to be  
a final order betwixt the said master and apprentice, anything  
in their indenture of apprenticeship, or otherwise, to the con-  
trary notwithstanding. Given under our hands and seals, the  
day and year first above written.

*Complaint of an Apprentice to two Justices, against his Master,  
on 20 G. II., c. 19, where the premium paid is not over £5.*

County of — } The information and complaint of A. P.  
to wit: } apprentice to A. M. of — husbandman,  
exhibited before us, two of Her Majesty's justices of the peace,  
in and for the county of York, the — day of — in the  
year, &c., who saith, that he the said A. P. is an apprentice,  
bound by indenture, to A. M. of — aforesaid, husbandman,  
and that he the said A. M. hath misused and ill treated him the

said apprentice, and particularly, that on or about the — day of — (here state the facts).

Before us, A. P.

J. P.

K. P.

*Summons of the Master by two Justices, on complaint of the Apprentice, on the 20 G. II. c. 19, § 3.*

County of — } To the Constable of —.  
to wit:

Whereas information and complaint hath been made unto us — two of Her Majesty's justices of the peace in and for the said county, by A. P., apprentice to A. M., of — in the said county, that he the said A. M. hath misused and ill treated him the said A. P. and particularly, (*here state the facts*). These are therefore, to require you to summon the said A. M. to appear before us at — in the said county, on — the — day of — to answer unto the said information and complaint. And be you then and there, to certify what you shall have done in the execution hereof. Herein fail not.

Given under our hands and seals, the — day of —.

*Discharge of an Apprentice, by two Justices on the Master misusing him, by the 20 G. II. c. 19, § 3.*

County of — } Whereas complaint hath been made before us,  
to wit: } — two of Her Majesty's justices of the peace in and for the said county, by A. P. apprentice to A. M. of — in the said county, tailor, that he the said A. M. hath misused and evil treated him the said apprentice, and particularly, (*set forth the particulars*). And whereas the said A. M. hath appeared before us, in pursuance of our summons for that purpose, but hath not cleared himself of and from the said accusation and complaint, but on the contrary, the said A. B. hath made full proof of the truth thereof, before us, upon oath. We therefore, by these presents, do discharge him the said A. P. of and from his apprenticeship to the said A. M., anything in the indenture of apprenticeship made between them, or otherwise, howsoever to the contrary, notwithstanding. Given under our hands and seals, the — day of — &c.

[Or—And whereas it hath been duly proved before us, as well upon the oath of A. G., constable of — aforesaid, as otherwise, that he the said A. G. did duly summon the said A. M. to appear before us at a reasonable time, in the said summons mentioned and specified; but notwithstanding the same, he, the said A. M. hath not appeared before us according to such summons. We therefore, having duly examined into the

matter of the said complaint, and the truth thereof having been fully proved before us, upon oath, do discharge, &c.]

*Complaint to two Justices, of the Master against his Apprentice, on the 20 G. II., c. 19 § 4.*

County of —, } The complaint and information of A. M. of  
to wit: } —, in the County of York, husbandman,  
taken and made on oath before us, — two of Her Majesty's  
justices of the peace in and for the said county, the — day  
of —, who saith that A. P., by indenture to him the said A.  
M., hath, in the service of his apprenticeship, been guilty of  
several misdemeanors, miscarriages, and ill behaviours towards  
him the said A. M., and particularly (*as the case shall be*).

Before us,

J. P.

A. M.

K. P.

*Warrant for a disorderly Apprentice by two Justices, on the  
aforesaid complaint, by the 20 G. II., c. 19 § 4.*

County of —, } To the Constable of —.  
to wit: }

Whereas oath hath been made before us, — two of  
Her Majesty's justices of the peace, in and for the said  
county, by A. M. of —, in the said county, husbandman, that  
A. P., apprentice to the said A. M., hath committed divers  
misdemeanors against the said A. M., his master, and particu-  
larly (*as the case shall be*). These are therefore to require you  
forthwith to apprehend the said A. P., and bring him before  
us, to answer unto the said complaint, and to be dealt with  
according to law; and you are to give notice to the said A. M.,  
that he appear before us at the same time, to make good the  
said complaint.

Given under our hands and seals the — day of — 18—.

*Commitment of an Apprentice to the House of Correction on  
complaint of his Master, by two Justices, on the 20 G. II.,  
c. 19, § 4.*

County of —, } To the constable of — in the said county,  
to wit: } and to the keeper of the house of correc-  
tion at — in the said county.

Whereas complaint hath been made before us, — two of  
Her Majesty's justices of the peace, in and for the said county,  
upon the oath of A. M. of —, in the said county, husband-  
man, that A. P., apprentice of the said A. M., hath committed  
divers misdemeanors against him the said A. M., his master,  
and particularly (*as the case may be*). And whereas, upon  
examination thereof, and upon hearing the allegations of both  
parties, having come before us for that purpose, and upon due



consideration had thereof, it manifestly appears to us that he the said A. P. is guilty of the premises so charged against him, as aforesaid. We do therefore hereby command you the said constable, to take and convey the said A. P. to the said house of correction, and to deliver him to the said keeper thereof, together with this warrant: and we do hereby command you, the said keeper of the said house of correction, to receive the said A. P. into your custody in the said house of correction, there to remain and be corrected, and held to hard labour for the space of ——. Given under our hands and seals, the — day of —.

*Discharge of an Apprentice by two Justices, on complaint of the Master, by 20 G. II., c. 19 § 4.*

County of — } Whereas complaint, &c. (as in the last prece-  
to wit: } cedent). We do therefore, by these presents, discharge the said A. P. from his apprenticeship to the said A. M., anything in any indenture or indentures of apprenticeship betwixt them, or otherwise to the contrary notwithstanding. Given, &c.

## Assignment of an Apprentice.

To all to whom these presents shall come, I, A. M., of — send greeting:

Whereas my apprentice A. P., hath divers years yet to come, and unexpired of his apprenticeship, to wit: — whole years from the — day of — now last past, as by his indenture of apprenticeship to me sealed doth appear. Now know ye, that I, the said A. M. for divers good causes and considerations, me hereunto moving, have given, granted, assigned and set over, and by these presents do fully and absolutely give, grant, assign and set over, unto A. S. of —, all such right, title, duty, term of years to come, service and demand whatsoever, which I, the said A. M. have in, or to the said A. P., or which I may or ought to have in him by force and virtue of the said indenture of apprenticeship; and moreover I, the said A. M., do by these presents covenant, promise and agree, with and to the said A. S., his executors and administrators, that notwithstanding anything by me the said A. M., to be done to the contrary, the said A. P. shall, during the said term of — years, well and truly serve the said A. S., as his master, and his commandments lawful and honest shall do, and from his service shall not absent himself during the said term: provided, that the said A. S. shall well entreat and use him the said A. P., and him the said A. P., in the craft, mystery and occupation of a —, which he the said A. S. now useth, after the best

manner that he can or may, shall teach, instruct and inform, or cause to be taught, instructed and informed, as much as thereunto belongeth, or in anywise appertaineth, and shall also, during the said term, find and allow unto the said A. P. sufficient meat, drink, apparel, washing, lodging, and all other things needful or meet for an apprentice.

In witness, &c.

### APPROVERS.

An Approver is a person who (when indicted of treason or felony and arraigned for the same), confesses the fact before plea pleaded, and appeals or accuses others, his accomplices of the same crime, in order to obtain his pardon; in this case he is called an approver. Such approvement can only be in capital offences, and is, as it were, equivalent to an indictment; for the appellee is equally called upon to answer it; and if he hath no reasonable or legal exceptions to make to the approver, (which were formerly very numerous), he must put himself upon his trial, and if found guilty must suffer judgment, and the approver shall have his pardon *ex debito justitia*.

On the other hand, if the appellee be acquitted, the approver shall receive judgment to be hanged, upon his own confession of the indictment; for the condition of his pardon has failed, viz., the convicting of some other person, and therefore his conviction remains absolute.—3 *Inst.* 129; 4 *Bl. Com.* 230; 2 *Hale*, c. 4, 29; 2 *Haw. c.* 24.

But this course of admitting approvements has long been disused, and the law upon the subject is now become merely matter of curiosity. But what has most contributed to render the system of approvement obsolete, is the practice which has now prevailed for many years, of the committing magistrate admitting an accomplice to become a witness (or as it is generally termed *king's evidence*) against his fellows, upon an implied confidence, which the judges of gaol delivery have usually countenanced and adopted, that if such accomplice makes a full and complete discovery of that and all other felonies, to which he is examined by the magistrate, and afterwards gives his evidence without prevarication or fraud, he shall not himself be prosecuted.—4 *Bl. Com.* 331.

And see *post* title "King's Evidence."

### ARBITRATION.

By 9 & 10 W. III., c. 15, § 1, all merchants and others, desiring to end any controversy (for which there is no remedy but by personal action or suit in equity) by arbitration, may agree that their submission of the suit to the award of any persons

shall be made a rule of any of Her Majesty's courts of record, and may insert such their agreement in their submission, or the condition of the bond or promise; and upon producing an affidavit of such agreement, and upon reading and filing such affidavit in court, the same may be entered of record, and a rule shall be thereupon made, that the parties shall submit to, and finally be concluded by such arbitration; and in case of disobedience thereto, the party shall be subject to all the penalties of contemning a rule of court, and process shall issue accordingly; which shall not be stopped by any order, &c. of any other court, either of law or equity, unless it appear on oath that the arbitrators or umpire misbehaved themselves, and that such award was corruptly procured.

Any arbitration or umpirage procured by corruption or undue means, shall be void and set aside by any court of law or equity, so that such corruption or undue practice be complained of in the court where the rule is made for such arbitration, before the last day of the next term after such arbitration made and published to the parties—§ 2.

### *The Form of an Agreement.*

Articles of agreement entered into and concluded upon this — day of — 1850, between A. B. of —, of the one part, and C. D. of — of the other part. Whereas (*here state the subject in dispute, and that an action is now pending in the Court of Q. B.*). And whereas the said A. B. and C. D., for the purpose of putting an end to all further controversy touching the several matters in question, have respectively agreed to refer all questions, differences and disputes whatsoever, now pending in the said matters, (*and if an action is pending, "also by whom, to whom, and in what manner, the costs of all the parties in such cause or suit shall be paid"*) to the consideration, judgment and arbitrament, and final award of —, being a person indifferently named and chosen by the parties hereto, as an arbitrator in the premises; and further, that the said reference and submission shall and may, in pursuance of the statute in that behalf made and provided, be made an order of Her Majesty's said court of Queen's Bench, if the said court shall think fit to order the same. Now these presents witness, that for the consideration and purposes aforesaid, it is hereby declared and agreed upon, by and between the said parties to these presents, that they the said parties hereto, and each of them, their and each of their heirs, executors and administrators, on his and their respective parts, shall and will well and truly stand to, abide by, perform, fulfil and keep, the order, arbitrament, final determination, and award of the said — the arbitrator

so as aforesaid indifferently named and chosen by them the said parties hereto, to adjudge, arbitrate, determine, order and award between them, of and concerning all questions, titles, controversies, differences and disputes, now depending or subsisting between them in the premises, and also by whom and in what manner, and to whom the costs in the said suit are or ought to be paid, so as the said arbitrator shall make such his order, arbitrament, final determination and award in writing, under his hand and seal, ready to be delivered to the said parties, or such of them as shall require the same, on or before the — day of — next ensuing the date of these presents. And it is hereby agreed by and between the said parties hereto, that no action at law or suit in equity, shall be commenced or prosecuted by any or either of them against the said —, for or on account of his award, to be made pursuant to this agreement.

In witness whereof, the said parties to these presents have hereunto set their hands and seals, the day and year first above written.

Signed, sealed, and delivered, }	A. B.	[ L. S. ]
in the presence of — }	C. D.	[ L. S. ]
E. F.		

### The Award.

To all to whom these presents shall come, I, — of —, yeoman, send greeting:

Whereas (*here recite the subject matter in dispute, and the agreement to refer the same to arbitration, as in the above form.*) Now know ye, and these presents witness, that I the said —, having taken upon myself the said reference, and having heard the statement of the parties and their witnesses, and having examined the matters and proofs produced on both sides, and having investigated the transactions and accounts by and between the said parties, and maturely considered the same, do make my award in manner following, that is to say:—I do hereby award and determine that there is now justly due and owing to the said A. B. from the said C. D. the sum of £ — upon a balance of account: and I do award, order and direct that the said C. D. shall pay the said sum of £ — to the said A. B. or his order, within — after the publication of this my award, and notice thereof in writing given to the said C. D.: and I do further order and direct that each of the said parties shall pay his own costs, charges and expenses of and concerning the said suit, and of all matters whatsoever attending the said reference: (a)

(a) The arbitrator may award otherwise, as he may think proper, and award either party to pay the whole.

and I do further order and direct that the costs and charges of and attending this my award shall be paid equally between the said parties.

In witness whereof, I have hereunto set my hand and seal, the — day of —, 18—.

Signed, sealed and delivered, }  
in the presence of — }

## ARRAIGNMENT.

The arraignment of a prisoner consists in calling him to the bar by his name, and commanding him to hold up his hand, in order to identify his person, reading over distinctly the indictment to him, that he may understand the charge, and demanding of him whether he is "guilty" or not "guilty." The practice formerly was to ask him, in addition, how he would be tried—to which the answer required was—"by God and my country." But now, by 4 & 5 V., c. 24, § 14, if any person whatsoever, being arraigned upon any indictment for treason, felony or piracy, shall plead thereto a plea of "not guilty," such person shall by such plea, without any further form, be deemed to have put himself or herself upon the country for trial, and the court shall, in the usual manner, order a jury for the trial of such person accordingly.

§ 15. If any person, being arraigned upon or charged with any indictment or information for treason, felony, piracy or misdemeanor, shall stand mute of malice, or will not answer directly to the indictment or information in every such case, it shall be lawful for the court, if it shall so think fit, to order the proper officer to enter a plea of "not guilty" on behalf of such person, and the plea so entered shall have the same force and effect as if such person had actually pleaded the same.

The prisoner should stand at the bar till he receives judgment, without irons, shackles or bonds.—2 Hale, 219.

## ARREST.

An arrest is, in the criminal law, an apprehending or restraining of the person of any individual, in order to be forthcoming to answer an alleged or suspected offence or crime: and to such an arrest all persons whatsoever, without distinction, are equally liable; but no man can, in general, be arrested unless charged with such a crime as will at least justify holding him to bail when taken.—4 Bl. Com. 289.

### Arrest by Warrant.

A warrant may be granted, in extraordinary cases, by the privy council, or any of the secretaries of state, but ordinarily, by justices of the peace.—1 Ld. Raym., 55.

A justice may grant a warrant in all cases where he has a jurisdiction over the offence, in order to compel the person accused to appear before him.—12 Co. 130 ; 2 Haw. 34 ; *Bane v. Methuen*, 2 Bing. 63.

Thus a warrant may be granted in all treasons, felonies and breaches of the peace, and also for all such offences as a justice has power to punish by statute.—*Ibid.* So a justice may grant a warrant against an offender charged on oath with having published a *libel*, and compel him to find sureties.—*Butt v. Conant*, 1 Brad. & B. 548.

It may be issued also to apprehend a person accused of felony, though not indicted, or to apprehend a person suspected of felony, though the original suspicion be not in the justice issuing the warrant, but in the party that prays it, for the justice is the competent judge of the probability offered to him of such suspicion.—2 Hale, P. C. 108, and see 34 Edw. III, c. 1.

But no warrant should in any case be granted without an examination upon oath of the party requiring it, as well to ascertain that there is a felony or other crime actually committed, as also to prove the cause and probability of suspecting the party against whom the warrant is prayed.—2 Hale, 110.

The reasonable grounds of suspicion are—common fame ; being found in such circumstances as induce a strong presumption of guilt ; the flight or escape of the person suspected ; being found in evil company ; or living an idle, vagrant and disorderly life.—2 Haw. 76.

The warrant should be under the hand and seal of the justice ; should set forth the time and place of making, and the cause for which it is made ; and should be directed to the constable or other peace officer, (or it may be to any private person, by name—*Salk.* 176.) requiring him to bring the party, either generally before any justice of the peace for the county, (or district) or only before the justice who granted it : the warrant in the latter case being called a special warrant.—2 Haw. 85 ; 4 Bl. 290.

A general warrant to apprehend all persons suspected, without naming or describing any person in particular, is illegal and void, for it is uncertain.—1 Hale, 580 ; 2 Haw. 82.

In like manner, a *blank warrant*, filled up by a third person, with the name of an officer after the warrant is signed and sealed by the magistrate, is illegal.—*Stockley's case*, 1 East. P. C. 310 ; *Houson v. Barrow*, 6 T. R. 122 ; *Stevenson's case*, 10 St. Tr. 462.

The cause of the arrest should be stated with sufficient certainty on the face of the warrant, in order to shew the jurisdiction of the court, or magistrate granting it.

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When a warrant properly penned is received by the officer, he is bound to execute it within the district for which the jurisdiction of the magistrate extends; and the officer will (by 24 G. II, c. 44) be in that case indemnified, even though the magistrate should not have strict authority to grant it.—*Bl.* 291.

The warrant of a justice of the peace in one county must be backed, that is, signed by a justice of the peace in another, before it can be executed in the latter county; and see 23 G. II, c. 26, and 24 G. II, c. 55.

When a constable, after he has arrested the party under a warrant, suffers him to go at large, upon his promise to come again and find sureties, he cannot afterwards arrest him by force of the same warrant; but if the party return and put himself again under the custody of the constable, it seems that the constable may then lawfully detain him and carry him before the justice.—2 *Haw.* 81.

And if the party escape, the officer may take him again, although he goes out of view, or flies into another town or county.—*Dalt.* c. 169.

### Arrest without Warrant.

A justice of the peace may apprehend, or cause to be apprehended, by word only, any person committing a felony or breach of the peace in his presence.—1 *Hale*, 86; and see 34 *Edw.* III, c. 1.

So the *sheriff* and the *coroner* may apprehend any felon within the county, without warrant.—2 *Hale*, 87, 88; 4 *Bl. Com.* 292.

So also the *constable* may arrest any one for a felony or breach of the peace committed in his view, and carry him before a justice of the peace. And in case of a felony actually committed, or a dangerous wounding whereby felony is likely to ensue, he may also, upon a probable suspicion, arrest the party, notwithstanding the suspicion arise not in his own mind, but in that of some other person, who communicates it to the constable. But in this last case he ought to inquire scrupulously into the causes of the suspicion; for though he cannot do this upon oath, it may reasonably carry over the suspicion to his own mind.—2 *Hale*, 91.

And although it should afterwards appear that no felony has been committed, yet he may justify an arrest without a warrant on a charge of felony made by another person, on reasonable cause of suspicion.—*Samuel v. Payne*, 359. Or even if, without any charge, the constable himself has reasonable cause of suspicion.—*Beckwith v. Shilby*, 6 B. & C. 635.

And if one menace another to kill him, and complaint be made to the constable forthwith, the constable may (in order

to avoid the present danger) arrest the party, and detain him till he can conveniently bring him to a justice of the peace; and this on the ground that it is the duty of the officer to prevent a probable felony, (2 *Hale*, 88; or, according to *Dalton*, c. 116, § 3) even a probable battery or assault.

*Watchmen*, who are appointed by the statute of *Winchester*, (13 *Edw. I.*) to keep watch and ward in all towns, from sun-setting to sun-rising, or such as are mere assistants to the constable, may arrest all offenders, and particularly *night-walkers* and *disorderly persons*, and commit them to custody till the morning.—2 *Hale*, 98.

By 4 & 5 V., c. 25, § 55, any person found committing any offence punishable by indictment, or upon summary conviction under this act, may be apprehended without a warrant by any peace officer, or the owner of the property. 4 & 5 V. c. 26, § 28, contains a similar provision for offences under that act.

#### *By private persons.*

Any *private person*, who is present when any felony is committed, is bound by the law to arrest the felon, on pain of fine and imprisonment if he escape through his negligence.—2 *Haw* 74.

So where an indictment is found against a party, a private person may arrest the offender.—*Dalt. c.* 170, § 5; 1 *Haw. c.* 28, § 12; 1 *East. P. C.* 301.

A private person may arrest any suspicious night-walker, or a common cheat, in order to take him before a justice.—1 *Jones*, 249; *Cro. Car.* 274; 2 *Rol. Ab.* 546.

#### *The manner of making an Arrest.*

The party arrested should have due notice of the officer's authority.—1 *Hale*, 458 470; 1 *Haw. c.* 31 § 49 50; *Fost.* 310; *Kel.* 136.

But otherwise, if the officer and his business be known.—*Mackally's case*, 9 *Co.* 69; *Pow's case*, *Cro. Car.* 183. And this will apply as well to a special bailiff as to a known officer.—2 *Russ.* 787.

After a due notification to the party, a bailiff *juratus et cognitus* (sworn and known) acting in his own district, need not shew the warrant by which he is constituted bailiff—1 *Hale*, 458, 461, 583; 9 *Co.* 69; *Gordon's case*, 1 *East. P. C.* 315; or, as it seems, the particular warrant directed to him to execute.—1 *East. P. C.* 315.

But if he acts out of his precinct, and is not sworn, or commonly known, he must then shew his warrant, if demanded.—*Hale*, 459; *Fost.* 320.

If the constable has no authority, a notification of his authority becomes more essential. In this case, it seems that the production of his *staff* of office, or any other known ensign of authority, will be sufficient—1 *Hale*, 460, *et seq*; *Fost.* 310; *Kel.* 66. 115; 1 *Russ.* 733.

An arrest in the night is good, both at the suit of the king and of the subject, in order to prevent the escape of the party.—9 *Co.* 66.

Bare words will not make an arrest, without laying hold on the person, or otherwise confining him. But if an officer comes into a room, and tells the party he arrests him, and locks the door, this is an arrest.—1 *Sa.* 79; 2 *Haw.* 129; *Cas. temp. Hard.* 301.

Doors and windows may be broken open if necessary, in order to make an arrest under a magistrate's warrant, or any other criminal process: but in this case, the officer must first signify to those in the house the cause of his coming, and request admittance.—2 *Haw.* 86; 1 *Hcle*, 459; 2 *Hale*, 117; *Dalt. c.* 169; *Fost.* 320; 1 *East, P. C.*, 315.

And as an officer may break open a man's own house, so may he break open the house of a stranger, in order to take him; but the party must be there—if not, the officer will be a trespasser—2 *Hale*, 117—unless acting under a magistrate's warrant.

Where one is *known* to have committed a treason or felony, or to have given another a dangerous wound—then, if pursued by an officer, or even a *private person*, with or without warrant, doors may be broken to apprehend him.—1 *Hale*, 459; 2 *Haw. c.* 14, § 7; *Fost.* 320.

Upon any *process of contempt* from courts of justice, the officer charged with the execution of such process may break open doors if necessary, to execute it.—*Burdett v. Abbot*, 14 *East*. 157.

So the like may be done upon a *capias ut lagatum*, a *capias pro fine*, or upon an *habere facias possessionem*; or where a *forcible entry* or *detainer* is found by inquisition, before justices of the peace, or appears upon their view.—2 *Haw. c.* 14, § 6; 4 *Com. Dig.*, title *Forcible Entry* (D. 6).

Or, on the warrant of a justice for *levying a penalty* on a conviction grounded on any statute, which gives the whole or any part of such penalty to the king.—2 *Haw. c.* 14, § 5. But in this case the officer, if required, must shew the warrant, and suffer a copy to be taken.—27 *G. II. c.* 20.

So where there is an *affray* in a house, in the view or hearing of the constable, and manslaughter or bloodshed is likely to ensue, he may break open doors to keep the peace.—2 *Hale*, 95; 1 *Haw.* 137; 2 *Haw.* 87.

So if there be a *disorderly* drinking or noise in a house, at an unreasonable time of night, especially in inns, taverns or

ale-houses, the constable or his watch (demanding entrance and being refused) may break open the doors, to see and suppress the disorder.—2 *Hale*, 95.

So wherever a person *escapes* from a lawful arrest, and shelters himself in a house, the officer may break open doors to retake him, whatever the cause of arrest may have been.—2 *Haw.* 87. But if it be upon a fresh pursuit, the officer (it seems) should have a warrant.—1 *East. P. C.* 324.

And in any of the above cases, where the officer enters a house, and the doors are locked upon him to prevent his egress, he may break them open to regain his liberty.—*Ibid.*

#### *What is to be done after making an Arrest.*

When the arrest is by warrant, the officer who has made it should forthwith bring the party before a magistrate, according to the direction of the warrant. If the warrant be to bring the defendant before *any* justice of the county, then the officer may bring him before what justice he thinks fit; for the defendant himself has no election in the matter.—1 *Hale*, 582; 2 *Ib.* 112.

If the time be unseasonable, as, in or near the night, whereby he cannot attend the justice; or if there be danger of a present rescue; or if the party be sick—then the constable may keep the party in a house, or any place of security, till the next day, or such time as it may be reasonable to bring him.—2 *Hale*, 120.

And after the officer has brought him to a justice, yet he is still in custody till the justice discharge, or bail, or commit him.—*Ibid.*

But the constable need not return the warrant itself, but may keep it for his own justification, in case he should be questioned for what he has done upon it.—*Ld. Raymond*, 1196.

(For the form of warrant, see "Warrant.")

#### ARSON.

Arson, at common law, means the malicious and wilful burning of a house, or out-house, of another man; and being an offence of very great malignity, was always considered of the degree of felony.—1 *Haw.* 105.

#### *By Statute.*

The statutes relating to this offence are the 23 *H. VIII.* c. 1; 25 *H. VIII.* c. 3; 4 & 5 *Ph. M.*, c. 4; 22 & 23, *C. II.* c. 7; all of which are now obsolete.

By stat. 6 *Anne*, c. 31, if any servant through negligence or carelessness shall set fire to any dwelling house, he shall forfeit £100, and in default of payment be committed to hard labour for eighteen months.

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And now by stat. 4 & 5 V., c. 26, § 2, whosoever shall unlawfully and maliciously set fire to any dwelling-house, any person being resident therein, shall be guilty of felony, and being convicted thereof, shall suffer death. § 3. Whosoever shall unlawfully and maliciously set fire to any church, chapel, or meeting-house for religious worship; or any house, stable, coach-house, out-house, ware-house, office, shop, mill, malt-house, hop-oast, barn or granary, or to any building or erection used in carrying on any trade or manufacture or any branch thereof, whether the same or any of them shall then be in the possession of the offender, or in the possession of any other person, shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the court, to be imprisoned at hard labour in the provincial penitentiary for life, or for any term not less than seven years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years.—

§ 17. Whosoever shall unlawfully and maliciously set fire to any stack of corn, grain, pulse, peat, coal, charcoal, or wood, or any steer of wood, shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the court, to be imprisoned at hard labour in the provincial penitentiary for the term of his natural life, or for any term not less than seven years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years.

By 10 & 11 V., c. 5, § 1, destroying or damaging any dwelling house by the explosion of gunpowder, or other explosive substance, is made felony—see *post* title “Explosive Substance.”

By 12 V., c. 20, setting fire to any school-house, lecture-room, seminary of learning, college, or building used for the purpose of education, or to any village, town or city hall, or to any railroad station house, steam or fire-engine house, or toll-booth, or to any building used or employed as a mechanics’ institute or as a public library, or to any hall or building used by any body or society of persons by whatever name or designation they may be known, and whether they associated for educational, philanthropic or benevolent purposes, or for any other lawful purpose, or to any museum or repository of curiosities, shall be felony, and the offender liable to imprisonment in the penitentiary for his natural life, or for any term not less than three years, or to imprisonment in any other prison for any term not exceeding two years.

*Information against a person for burning a Barn.*

County of —, } The information and complaint of A. B., of  
to wit. } —, in the said county, yeoman, taken on  
oath this — day of —, in the year of our Lord, one thou-

sand eight hundred and fifty-one, before me J. P., Esq., one of Her Majesty's justices of the peace in and for the said county. The said informant saith, that about the hour of three o'clock this morning he discovered that his barn adjoining to his dwelling-house, situate in the said township, was on fire, and that from the information he hath received he hath good cause to suspect, and doth verily suspect that the same was wilfully and feloniously set on fire by one C. D., of —, labourer, with intent thereby to injure this informant, wherefore he prayeth a warrant against the said C. D., and that he may be dealt with according to law.

Sworn, &c.

*Warrant thereon.*

County of —, } To the Constable of —, in the County  
to wit. } of —.

Whereas A. B., of —, hath this day made complaint on oath, before me, J. P., Esq., one of Her Majesty's justices of the peace for the said county, that &c. (*here state the offence as laid in the information*). These are therefore to command you forthwith to apprehend and bring before me, or some other of Her Majesty's justices of the peace for the said county, the body of the said C. D., to answer unto the said charge, and to be further dealt with according to law. Herein fail you not. Given under my hand and seal, the — day of —, in the year of our Lord, —.

(For commitment for further examination—see *post* title "Justice of the Peace.")

*Warrant of Commitment for Trial. (Archbold.)*

County of —, } J. P. Esquire, one of Her Majesty's justices  
to wit. } of the peace for the said county, to the constable of —, in the said county, and to the keeper of the common gaol at —, in the said county.

These are to command you the said constable, in Her Majesty's name, to convey and deliver into the custody of the keeper of the said common gaol, the body of C. D., charged this day before me the said justice, on the oath of A. B., of —, yeoman, for that he the said C. D., on or about the — day of —, instant, unlawfully, maliciously and feloniously did set fire to a certain barn, of him the said A. B., situate in the said township of —, with intent thereby then and there to injure the said A. B., against the form of the statute in that case made and provided. And you, the said keeper, are hereby required to receive the said C. D. into your custody, in the same common gaol, and him there safely to keep, until he shall be thence

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delivered by due course of law. Herein fail you not. Given under my hand and seal, the — day of —, in the year of our Lord —.

## ARTICLES OF THE PEACE.

Whenever a person has just cause to fear that another will burn his house, or do him or his wife or children a corporal hurt, or unlawfully imprison any of them, or that he will procure others to do so, he may exhibit *articles of the peace* against the person from whom he apprehends such mischief, either in the Court of Chancery or Queen's Bench, or before a justice of the peace; and such court or justice is bound to require the party to find sureties to keep the peace towards the exhibitant, upon the latter making oath that he is actually under such fear from the other person, and that he has just cause to be so, and that he does not require such surety out of malice or vexation.—1 *Haw. c. 60, § 6, 7.*

And all persons whatsoever under the Queen's protection, subjects or aliens, have a right to demand surety of the peace.

A wife may demand it against her husband, and a husband against his wife.—*Ib. § 2, 4.*

Sureties of the peace may be required from any person whatsoever under the degree of nobility: but *infants* and *married women* ought to find security by their friends, and not to be bound themselves.—*Ib. § 5.*

When the articles are exhibited before a *justice of the peace*, the party, if present, may be immediately committed, unless he offer sureties; but if he be absent, the justice cannot commit him for not finding security, until he has been required, and has refused to do so; and the warrant in that case must shew the cause for which it is granted, and at whose suit.—1 *Haw. c. 60, § 9; Rex v. Wilks, ibid (5.)*

The proper course in such a case would be for the justice to take the information, upon oath, of the party complaining, with a statement of the particular facts or menaces that induce the complainant to fear some injury to himself or property: upon which the justice may issue his warrant for bringing the party before him; upon his being brought before him, he may then either bind him over with sufficient sureties to keep the peace, or to appear at the sessions. If bound over to appear at the sessions, he should also be bound to keep the peace in the meantime towards the party complaining, and this is the common form of the precedent.—1 *Haw. c. 60, § 16.* It is better, however, for justices to bind over the parties to keep the peace a reasonable time, to be stipulated in the recognizance, rather than to appear at the sessions, where the offender would be

obliged to find fresh security, without any new offence being alleged; and for non-appearance his recognizance would be forfeited, except reasonable cause shewn, by sickness or otherwise; and this opinion is corroborated by a recent decision in the Court of Queen's Bench, which determines that a justice of the peace is authorised to take surety for the peace for a limited time, (e. g. two years) according to his discretion, and that he need not bind the party over to the next sessions.—2 *B. & A.* 278.

A warrant for the peace must be executed by the person only to whom it is directed, who is authorised to break open any door on being refused admittance and stating the cause of his coming.—2 *Huw. c.* 14, § 2.

If the warrant is special, the party must be carried before the justice granting it, and no other; but if general, the offender may be taken before any justice, and the officer may take him to prison on refusing to give sureties before such justice.—1 *Haw. c.* 60, § 13. If the accused, on being apprehended, refuse to obey the warrant, or to find sureties, the officer may, without further warrant, convey him to gaol: but the warrant should so direct; otherwise it is prudent to bring him before the justice, by whom, on refusal to find sureties, he may be committed without further warrant.—2 *H. H.* 112; *Dalt. c.* 118.

An officer not doing his duty may be indicted and fined at the sessions.—*Dalt. c.* 118. If the sureties are insufficient, the justice may compel the party to find better.—*C.* 116, 119. But if the sureties should die, the principal is not compellable to find others, their executors or administrators being liable.

The recognizance may be forfeited by doing any actual violence to the person of another, or causing it to be done by his instigation.—*Dalt. c.* 121. A justifiable assault is no forfeiture.—1 *Haw. c.* 60, § 23, 24.

If the recognizance is made to keep the peace *generally*, it shall be deemed to be during the party's life; and as such recognizance cannot be discharged, it should not be so granted on slight grounds.—*Dalt. c.* 119, 120. But it is discharged upon the death of the Queen, or of the principal.—1 *Haw. c.* 60, § 17. And it has been held that the recognizance may be discharged on the release of the complaining party.—*Id.*

If the recognizance is to keep the peace towards the Queen and all her subjects, the sessions may discharge it, unless on proclamation some person appears, to demand sureties upon warrantable cause; but if it is made to keep the peace with a particular person, the sessions will not discharge it, though the person requiring it do not appear; and the court may bind over the party to the next sessions.—*Dalt. c.* 120.

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If the party accused be in prison for want of sureties, on the death of the party demanding the peace he shall be released, or if he offers sufficient surety while in prison.—*Dalt. c. 118.*

See also *post* title "Surety for Good Behaviour."

*Information to require Surety of the Peace and good behaviour,  
(Toone.)*

County of —, } The information and complaint of A. B. of  
to wit. } —, taken on oath before me, J. C., Esq.,  
one of Her Majesty's justices of the peace in and for the said  
county, this — day of —, 18—, who says that C. D. of —,  
yeoman, did on the — day of —, threaten to beat (*kill,  
maim, &c., as the fact may happen to be*) this complainant, and  
that from the above and other threats used by the said C. D.  
towards this complainant, he, this complainant, is afraid that  
the said C. D. will do him some bodily harm, and therefore  
prays that the said C. D. may be required to find sufficient  
sureties to keep the peace and be of good behaviour towards  
him, this complainant. And the said A. B. also saith, that he  
doth not make this complaint against, nor require such sureties  
from the said C. D. from any malice or ill will, but merely for  
the preservation of his person from injury.

Sworn before me,

A. B.

*Warrant thereon.*

County of —, } To the Constable of —, in the County  
to wit. } of —.

Forasmuch as A. B., of —, yeoman, hath personally come  
before me, J. C., Esq., one of Her Majesty's justices of the peace  
in and for the said county, and hath this day taken his corporal  
oath that C. D. of —, yeoman, did on the — day of —, at  
—, threaten to beat, &c. (*or as the case may be*) the said A. B.,  
and that from the above and other threats used by the said C. D.  
towards the said A. B. he, the said A. B., is afraid that the said  
C. D. will do him some bodily harm, and hath therefore prayed  
of me, the said justice, security of the peace and good behaviour  
to be had or granted to him the said A. B. against the said C. D.  
These are therefore to require you, in the name of our said  
lady the Queen, immediately upon sight hereof, to bring the  
said C. D. before me, to find sufficient sureties for his personal  
appearance at the next general quarter sessions of the peace  
to be holden in and for the said county, then and there to an-  
swer to the premises, and in the meantime that he the said  
C. D. do keep the peace and be of good behaviour towards  
our said lady the Queen and all her liege people, and especially  
towards the said A. B. Given under my hand and seal, at —,  
in the said county, the — day of —.

## Articles of the Peace.

### *Condition of the Recognizance to appear at the Sessions.*

The condition of this recognizance is such, that if the above bounden C. D. shall personally appear at the next general quarter sessions of the peace, to be holden in and for the county of —, and then and there answer to articles of the peace to be then and there exhibited against him by A. B. of —, and shall also do and receive what shall be then and there enjoined him by the court; and in the meantime shall keep the peace, and be of good behaviour towards the Queen and all her liege people, and especially towards the said A. B., then the above recognizance to be void, or otherwise to remain in full force.

### *Condition of the Recognizance to keep the Peace, &c. without appearance at the Sessions.*

The condition of the above recognizance is such, that if the above bounden C. D. shall keep the peace, and be of good behaviour towards the Queen and all her liege people, and especially towards A. B. of —, for the space of one year, (*or longer if need be*) then this recognizance to be void, or else to remain in full force.

### *Commitment for want of Sureties.*

County of York,  
to wit.

To the Constable of —, and to the Keeper of the Gaol at the City of Toronto, in the said County of York.

Whereas C. D. of —, in the said county, yeoman, is now brought before me, J. C., Esq., one of Her Majesty's justices of the peace in and for the said county, and is by me required to find sufficient sureties to be bound with him in a recognizance for his personal appearance at the next general quarter sessions of the peace to be holden in and for the said county, and in the meantime to keep the peace and be of good behaviour towards the Queen and all her liege people, and especially towards A. B. of —, in the said county, yeoman; and whereas he the said C. D. hath refused (a) and doth now refuse before me to find such sureties. These are therefore in the name of our said lady the Queen, to command you the said constable forthwith to convey the said C. D. to the common gaol of our said lady the Queen at the city of Toronto in the said county, and to deliver him to the keeper thereof there, together with this precept; and I do in the name of our said Lady the Queen, hereby command you the said keeper to receive the said C. D. into your custody in the said gaol, and him there safely to keep until he shall find such sureties as aforesaid or be otherwise discharged in due course of law. Given under my hand and seal the — day of —, in the year of our Lord 18—.

(a) A neglect or inability to find sureties is the same as a refusal at law.

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*The form of a supersedeas to be used where the defendant finds surety before the warrant is executed upon him.*

County of —, } J. C. Esq., one of the justices of our lady the  
to wit. } Queen, assigned to keep the peace within  
the said county, to the sheriff of the said county, and to the  
constables and others, the faithful ministers and subjects of  
our said lady the Queen within the said county, and to every  
of them, greeting.

Forasmuch as C. D. of —, in the said county, yeoman,  
hath personally come before me at —, in the said county,  
and hath found sufficient surety, that is to say, E. F. of —,  
yeoman, and E. H. of —, yeoman, either of whom hath  
undertaken for the said C. D. under the pain of £20, and he,  
the said C. D. hath undertaken for himself, under the pain  
of £40, that he, the said C. D. shall personally appear at  
the next general quarter sessions of the peace to be holden in  
and for the said county, then and there to answer to articles of  
the peace to be exhibited against him by A. B. of —, yeoman,  
and to do and receive what shall be then and there enjoined  
him by the court, and in the meantime to keep the peace and  
be of good behaviour towards the Queen and all her liege  
people, and especially towards the said A. B. Therefore, on  
behalf of our said lady the Queen, I do command you and  
every of you, that you utterly forbear and do cease to arrest,  
take, imprison, or otherwise by any means, for the said cause,  
to molest the said C. D., and if you have for the said occasion  
and for none other taken and imprisoned him the said C. D.,  
that then him you deliver or cause to be delivered and set at  
liberty without further delay. Given under my hand and seal,  
this — day of —, &c.

## *Release of the Surety for the Peace, &c.*

County of —, } Be it remembered, that A. B. of —, in the  
to wit. } said county, yeoman, on the — day of  
—, in the — year of the reign of our sovereign lady Vic-  
toria, came before me, J. C., Esq., one of the justices of our  
said lady the Queen assigned to keep the peace within the  
county, and there remised and freely released to C. D. of —  
in the said county, yeoman, the surety of the peace and good  
behaviour by him the said A. B. before me prayed against the  
said C. D.

Given under my hand and seal, the — day of —, in the  
year of our Lord, 18—.

*Or, if it is before another Justice, then say—*

The surety of the peace and good behaviour which he has  
against C. D. of —, in the said county, yeoman. Given, &c.

*Discharge of one committed for want of Sureties.*

County of —, } J. C., Esq., one of the justices of our lady  
to wit. } the Queen assigned to keep the peace in  
the county of —, to the keeper of Her Majesty's gaol at the  
city of — in the said county, greeting.

Forasmuch as C. D., in the prison of our said lady the Queen, in your custody now being, at the suit of A. B. of —, in the said county, yeoman, for the want of his finding sufficient sureties, &c. (as in the former precedents of a supersedeas.) Therefore, on behalf of our said Lady the Queen, I do command you that if the said C. D. do remain in the said gaol for the said cause, and none other, then you forbear to grieve or detain him any longer, but that you deliver him thence and suffer him to go at large, and that upon the pain which will fall thereon. Given under my hand and seal, this — day of —, 18—.

J. C.

*Form of Articles of the Peace.*

County of —, } C. D. wife of E. D. of — in the said County,  
to wit. } labourer, prays surety of the peace against  
the said E. D., her said husband, for fear of death or bodily injury.

First—This informant, on her oath, saith, that she intermarried with her said husband about — years ago, since which time he hath often in a cruel, barbarous, and inhuman manner, beat, abused, and ill-treated this informant, and frequently threatened to take away her life.

Secondly—This informant saith, that on the — day of — last past, her said husband in a violent passion, (*state the particular acts of cruelty.*)

Lastly—This informant saith, that she is actually afraid her said husband will do her some bodily injury, if not murder her, should she return home again to him; and saith, that she doth not make this complaint against her said husband out of any hatred, malice, or ill-will which she hath or beareth towards him, but purely for the preservation of her life and person from further danger.

Articles of the peace should have the signature of counsel.

**ASSAULT AND BATTERY.**

An assault is a forcible attempt to do corporal injury to another; a blow, however trifling, is a battery; every assault, however, is not a battery; but every battery necessarily includes an assault.—1 *Haw. P. C.* 263. So striking at another, or even holding up a fist in a menacing manner, will amount to an assault.—1 *Haw. C.* 63.

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An unlawful imprisonment is also an assault in law.—1 *How. C. 60.*

An assault in some instances may be justified: Thus, a party may justify an assault, *molliter manus imposit*, in defence of his goods, his wife, father, mother, or child, and a wife in defence of her husband.—1 *Ld. Ray. 62.*

A servant may also justify an assault in defence of his master, but doubtful whether a master may do so in defence of his servant.—1 *Salk. 407.*

So also may a master reasonably correct his apprentice or servant; and a master his scholar; but immoderate correction, or with an unlawful instrument, will constitute an assault.—3 *Salk. 47.*

A common assault is punishable as a misdemeanor; and the punishment usually inflicted is, fine, imprisonment, and the finding of sureties.—4 *Bl. Com. 417.*

## Aggravated Assaults

Are such as are committed by persons with intent to commit felony, or some other illegal act: assaulting a magistrate or constable in the execution of his duty; or a servant his master; and the like.

And any servant assaulting his master or mistress, may, upon conviction before two justices, and upon the oath of two witnesses, be imprisoned for a year, or less—5 *Eliz. c. 4, § 21.*

Also, any person assaulting or challenging another for money won by gaming, shall forfeit to the King all his goods, and be imprisoned two years.—9 *Ann. c. 14, § 8.*

By the 4 & 5 V., c. 27, § 25: Where any person shall be charged with, and convicted of any of the following offences as misdemeanors; that is to say, of any assault with intent to commit felony; of any assault upon any peace officer or revenue officer in the due execution of his duty, or upon any person acting in aid of such officer; of any assault upon any person with intent to resist the lawful apprehension or detainer of such party so assaulting or of any other person for any offence for which he or they may be liable by law to be apprehended or detained; or of any assault committed in pursuance of any conspiracy to raise the rate of wages; in any such case the Court may sentence the offender to be imprisoned for any term not exceeding two years, and may also (if it shall so think fit) fine the offender, and require him to find sureties for keeping the peace.

§ 26. And if any person shall unlawfully and with force hinder any seaman from working at, or exercising his lawful trade, business, or occupation; or shall beat, wound, or use

any other violence to him with intent to deter or hinder him from working at, or exercising the same; or if any person shall beat, wound, or use any other violence to any person, with intent to deter or hinder him from selling or buying any wheat, or other grain, flour, meal, or malt, in any market or other place; or shall beat, wound, or use any other violence to any person having the care or charge of any wheat or other grain, flour, meal, or malt, whilst on its way to or from any city, market, town, or other place, with intent to stop the conveyance of the same; every such offender may be convicted thereof before two justices of the peace, and imprisoned and kept to hard labour in the common gaol, or house of correction, for any term not exceeding three calendar months: Provided always, that no person who shall be punished for any such offence, by virtue of this provision, shall be punished for the same offence by virtue of any other law whatsoever.

§ 36. And when any person shall be convicted of any offence punishable by this act, for which imprisonment may be awarded, the court may sentence the offender to be imprisoned, or to be imprisoned and kept to hard labour in the common gaol or house of correction, and also direct that the offender shall be kept in solitary confinement for any portion or portions of such imprisonment, or of such imprisonment with hard labour, not exceeding one month at any time, and not exceeding three months in any one year, as to the court in its discretion shall seem meet.

#### ***Common Assault.***

By the 4 & 5 V., c. 27, § 27, where any person shall unlawfully assault or beat any other person, it shall be lawful for any justice of the peace, upon complaint of the party aggrieved praying him to proceed summarily under this act, to hear and determine such offence: and the offender, upon conviction thereof before him, shall forfeit and pay such fine as shall appear to him to be meet, not exceeding, together with costs, (if ordered) the sum of £5, which fine shall be paid to the treasurer of the municipal district, or place in which the offence shall have been committed, and make part of the funds of such district; or if the conviction be had in any place not within any municipal district, then such fine shall be paid over to such officer, and be applicable to such purposes as other fines and penalties by law are: and the evidence of any inhabitant of the municipal district shall be admitted in proof of the offence, notwithstanding such application of the fine; and if such fine and costs (if ordered) be not paid upon conviction, or within such period as the said justice shall appoint, it shall

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be lawful for him to commit the offender to the common gaol or house of correction, there to be imprisoned for any term not exceeding two calendar months, unless such fine and costs be sooner paid : but if the justice, upon the hearing of such case, shall deem the offence not to be proved, or shall find the assault or battery to have been justified, or so trifling as not to merit any punishment, and shall accordingly dismiss the complaint, he shall forthwith make out a certificate under his hand, stating the facts of such dismissal, and shall deliver such certificate to the party against whom the complaint was preferred : and if such costs (a) shall not be paid immediately upon dismissal, or within such period as such justice shall at the time of such dismissal appoint, it shall be lawful for him to issue his warrant to levy the amount of such costs within a certain time, to be in the said warrant expressed ; and in default of sufficient distress, may commit the party by whom such costs shall be so ordered to be paid as aforesaid to the common gaol of the district, county, or division where such offence shall be alleged to have been committed, there to be imprisoned for any term not exceeding ten days, unless sooner paid. § 28. Such certificate, or in case of conviction the payment of the amount adjudged, or imprisonment awarded and suffered for nonpayment, shall release the party from all further proceedings, civil or criminal, for the same cause. § 29. When any person shall be summarily convicted before a justice of the peace of any offence against this act, it shall be lawful for such justice, if he shall so think fit, to discharge the offender from his conviction upon his making such satisfaction to the party aggrieved, for damages and costs, or either of them, as shall be ascertained by the said justice. § 30. If the justice shall find the assault complained of to have been accompanied by any attempt to commit felony, or shall be of opinion that the same is, from any other circumstance, a fit subject for indictment, he shall deal with the case accordingly : justices not to determine any case of assault in which any question shall arise as to the title to lands, or any interest therein, or as to any bankruptcy or insolvency, or any execution under the process of any court of justice. § 31. Any person aggrieved by any summary conviction or decision under this act, may appeal to the next court of general or quarter sessions which shall be holden not less than twelve days after the day of such conviction, giving to the other party a notice in writing of such appeal, and of the cause and matter thereof, within three days after conviction or decision, and seven days at the least before such sessions, and shall also either remain in custody until the sessions, or enter

(a) *Quere*--What costs ?

into a recognizance with two sufficient sureties before a justice of the peace, conditioned personally to appear at the said sessions and to try such appeal, and to abide the judgment of the court thereupon, and pay such costs as shall be by the court awarded, and upon such notice being given and such recognizance entered into, the justice before whom the same shall be entered into, shall liberate such person, if in custody, and the court, at such sessions, shall hear and determine the matter of the appeal; and shall make such order therein, with or without costs to either party, as to the court shall seem meet; and in case of the dismissal of the appeal, or the affirmance of the conviction, shall order and adjudge the offender to be punished according to the conviction, and to pay such costs as shall be awarded, and, if necessary, issue process for enforcing such judgment.

§ 34. The court shall have power to empanel a jury to try the matter, and on the finding of the jury shall give judgment accordingly: Provided, that the court shall not in any case adjudge the payment of a fine exceeding £5, in addition to the costs, nor order imprisonment for any period exceeding one month: and all fines imposed and recovered by the judgment of the court shall be applied as other fines recovered under this act.

§ 40. And for the more effectual prosecution of offences punishable upon summary conviction by virtue of this act, be it enacted, that when any person shall be charged on the oath of a credible witness, before any justice of the peace, with any such offence, the justice may summon the person charged to appear at a time and place to be named in such summons; and if he shall not appear accordingly, then (upon proof of the due service of the summons upon such person, by delivering the same to him) the justice may either proceed to hear and determine the case *ex parte*, or may issue his warrant for apprehending such person and bringing him before himself or some other justice of the peace; or the justice before whom the charge shall be made may (if he shall so think fit) issue such warrant in the first instance, without any previous summons.

§ 41. The prosecution for every offence punishable on summary conviction by virtue of this act, shall be commenced within three calendar months.

§ 42. Conviction to be drawn up in the form of words prescribed by the act, or to the same effect.

*Affidavit to ground a Warrant for an Assault.*

County of — } A. B. of — yeoman, maketh oath and saith,  
to wit. } that on the — day of — instant, at — in  
the township of — C. D. of — labourer, did violently assault

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and beat this deponent, by striking him with his fists several blows on the head, face, and other parts of his body, without any just or legal provocation.

Sworn, &c.

A. B.

*Summons for an Assault.*

See post title—"Summons."

*Warrant for an Assault.*

County of ——— } To the Constable of ———.  
to wit. }

Whereas complaint hath been made before me, J. P. Esq., one of her Majesty's justices of the peace in and for the said county, upon the oath of A. I. of ——— in the said county, tailor, that A. O. of ——— aforesaid, butcher, did on the ——— day of ——— violently assault and beat him the said A. I. at ——— aforesaid, in the county aforesaid. These are therefore in her Majesty's name to command you forthwith to apprehend the said A. O. and to bring him before me, to answer unto the said complaint, and to be further dealt with according to Law. Given under my hand and seal the ——— day of ——— 18—.

*Form of Conviction, pursuant to the 4 & 5 Vic. c. 27. § 42.*

County of ——— } Be it remembered, that on the ——— day of ———  
to wit. } in the year of our Lord ——— at ——— in the  
county of ——— (or riding, division, district, city, &c. as the case  
may be,) A. O. is convicted before me, (naming the Justice,) one  
of Her Majesty's Justices of the Peace for the said County,  
(or riding, &c.) for that he the said A. O. did (specify the of-  
fence, and the time and place when and where the same was  
committed, as the case may be;) and I the said Justice adjudge  
the said A. O. for his said offence to be imprisoned in the ———  
(or to be imprisoned in the ——— and there kept at hard labour)  
for the space of ——— (or, I adjudge the said A. O. for his said of-  
fence to forfeit and pay the sum of ———) (here state the amount  
of the fine imposed,) and also to pay the sum of ——— for costs;  
and in default of immediate payment of the said sums, to be  
imprisoned in the ——— for the space of ———, unless the said sums  
shall be sooner paid; (or, and I order that the said sum shall be  
paid by the said A. O. on or before the ——— day of ———) and  
I direct that the said sum of ——— (i. e. the amount of the fine,)  
shall be paid to ——— of ——— aforesaid, in which the said offence  
was committed, to be by him applied according to the direc-  
tions of the statute in that case made and provided (or as the  
case may be); and I order that the said sum of ——— for costs,  
shall be paid to C. D. (the party aggrieved.) Given under my  
hand, the day and year first above mentioned.

## Certificate of Dismissal.

County of —, } Whereas C. D. of the township of —, in  
to wit. } the said county, yeoman, having this day  
appeared before me, J. K., Esq., one of Her Majesty's justices  
of the peace for the said county, pursuant to my summons (*or  
warrant, as the case may be*) to answer to the charge and com-  
plaint of A. B., of —, for having &c., (*stating the offence as  
laid in the information*) and which said charge the said com-  
plainant hath prayed might be proceeded with summarily,  
according to the statute in such case made and provided : and  
I the said justice, having accordingly this day heard the said  
complaint, and duly considered the same, and the evidence of  
the witnesses, as well on the part of the said complainant as  
of the said defendant, have adjudged and determined that  
[the said offence has not been proved ; *or*, that the assault and  
battery complained of was fully justified ; *or*, that the same has  
been proved, but is so trifling as not to merit any punishment],  
and have accordingly dismissed the said complaint ; and the  
said C. D. having required of me a certificate thereof, I the said  
justice do hereby certify the same, pursuant to the statute in  
such case made and provided.

Given under my hand, the — day of —, 185—.

J. K., J. P., H. D.

For the form of Notice of Appeal see *post* title, "Summary  
Punishment," and forms annexed thereto.

## Recognizance (in the usual form).

The condition of this Recognizance is such, that if the above  
bounden A. O., shall and do appear at the next general quarter  
sessions of the peace to be holden in and for the said county,  
and then and there answer to a bill of indictment to be prefer-  
red against him, for an assault on one A. I., and shall not  
depart the court without leave, then this recognizance to be  
void.

Taken and acknowledged, &c.

## Commitment for an Assault, for want of Sureties.

County of —, } To E. F., Constable of —, and to the  
to wit : } keeper of the common gaol in the said county.

Whereas C. D. was this day brought before me, S. P., Esq.,  
one of Her Majesty's justices of the peace in and for the said  
county, and charged on the oath of A. B., with assaulting and  
beating him the said A. B. And whereas the said C. D. hath  
refused (or neglected), although by me required, and doth  
refuse (or neglect) to find good and sufficient sureties, as well  
for his personal appearance at the next general quarter sessions

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of the peace to be held in and for the said county, to answer to an indictment to be then and there preferred against him for the said assault, as also in the meantime to keep the peace towards the said A. B. and all her Majesty's liege subjects. These are therefore, in her Majesty's name, to command you, the said constable, safely to convey the said C. D., and deliver him to the keeper aforesaid, together with this warrant; and you the said keeper, are hereby required to receive into your custody in the said gaol the body of the said C. D., and him there safely keep until he shall find such sureties, or otherwise shall be discharged by due course of law. Given under my hand and seal, &c.

## *Indictment for a Common Assault.*

County of —, } The Jurors for our lady the Queen, upon  
to wit: } their oath, present, that A. O., late of the  
township of —, in the county of —, butcher, on the —  
day of —, in the — year of the reign of our Sovereign  
lady Victoria, with force and arms, at the township aforesaid,  
in the county aforesaid, in and upon one A. I., in the peace of  
God and our said lady the Queen then and there being, did  
make an assault, and him the said A. I. then and there did  
beat, wound and ill-treat, and other wrongs to the said A. I.  
then and there did, to the great damage of the said A. I., and  
against the peace of our said lady the Queen, her crown and  
dignity.

## *Indictment for an Aggravated Assault—(Archbold).*

(Commencement as before) in and upon one I. N., in the  
peace of God and our said lady the Queen then and there being,  
did make and assault, and him the said I. N. then and there  
did beat, wound and ill-treat, and that the said J. S., with both  
his hands, then and there violently cast, flung and threw the  
said I. N. to, upon and against a certain brick floor there, and  
him the said I. N., in and upon his head, neck, breast, back,  
sides and other parts of his body, with both the feet of him  
the said J. S., then and there violently and grievously did kick,  
strike and beat, giving to the said I. N. then and there, as well  
by such flinging, casting and throwing of him the said I. N.,  
as also by such kicking, striking and beating of the said I. N.  
as aforesaid, in and upon the head, neck, breast, sides, back  
and other parts of the body of him the said I. N., divers  
bruises, hurts and wounds, so that his life was greatly des-  
paired of, and other wrongs, &c. (as before).

## *For Assaulting a Constable in the execution of his Office.*

(Commencement as before) in and upon I. N., (then being  
one of the constables of the said township of —, in the

county aforesaid, and in the due execution of his said office, then and there being) did make an assault, and him the said I. N., so being in the due execution of his said office as aforesaid, then and there did beat, wound and ill-treat, and other wrongs, &c., (as before). *Add a count for a common assault. From this precedent an indictment may readily be framed for an assault upon any other public officer in the execution of his office.—Arch.*

### ASSESSMENTS.

By 8 Vic. c. 58, the grantee or owner of any block or township unsurveyed shall cause the same to be surveyed, and divided into lots and concessions, on or before the 1st December next, and return same to treasurer with a correct map or plan. § 2. Such lands to be then liable to assessment. § 5. Penalty of £200 on any owner neglecting to comply with this act, and £100 annually for continued neglect. § 6. Recoverable before any three justices of the peace where the lands lie, and to be levied by warrant to the sheriff; monies to be appropriated to the use of the district.

By 13 & 14 Vic., c. 66, all former assessment laws are repealed, viz., \*59, G. III. (sess. 2,) c. 7; \*6 G. IV. c. 7; \*9 G. IV. c. 3; \*7 W. IV. c. 19; and so much of the several acts mentioned in the schedules to the 12 Vic. c. 80, as provide for or regulate the assessment on property in any of the cities or liberties, towns or villages, to which such acts refer; and all acts or by-laws of municipal corporations or other local authorities in Upper Canada, imposing rates or assessments, or providing for the collection thereof, and all acts inconsistent with this act are repealed, except as to collection of arrears. This act to commence on the 1st of January, 1851, and not before.

By 13 & 14 Vic. c. 67, entitled, "An act to establish a more equal and just system of assessment in the several townships, villages, towns and cities in Upper Canada," it is enacted by § 1, that for all purposes of local and direct taxation, unless otherwise provided, all land and all such personal property as hereinafter defined, in Upper Canada, whether owned by individuals or copartners, or corporations, shall be liable to taxation, subject to exemptions specified; and the occupant of any crown land shall be liable to taxation for such land, but the land shall not be chargeable.

§ 4. No person deriving income from any trade, calling, office or profession, exceeding £50 per annum, shall be assessed for a less sum, as the amount of his net taxable property, than the amount derived from such income during the year then last past, but such last year's income shall be held to be his net taxable personal property, unless he has other taxable personal property to an equal or greater amount.

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## PROPERTY EXEMPT FROM TAXATION.

1. All property vested in the crown, or held in trust for the use of Indians, or vested in any public body, officer, person or party, in trust for the crown, or for the public use of the province, save crown land in private occupancy.

2. Every place of worship, church-yard or burying-ground; the real estate of every university, college, grammar school, or other seminary of learning, actually used and occupied by it (but not if occupied by others) or unoccupied; every public school house, town or city hall, court house and gaol, house of correction and lock-up house, and the land attached thereto; every public hospital with the land attached, or on which the same are erected, and the personal property belonging to each of them; every public road, way or public square, and the property belonging to every township, village, town, city or county, if occupied for the purposes thereof, or unoccupied.

3. The provincial penitentiary and the land attached thereto.

4. Every industrial farm, poor-house, alms-house, house of industry, or lunatic asylum, and every house belonging to a company for the reformation of offenders, and the real and personal property belonging to or connected with the same.

5. The property of every public library.

§ 6. All taxes to be levied under this act or the act 12 Vic. 81 (Municipal Act), or under any other act passed or to be passed for local or direct taxation, where no other express provision may be made, shall be levied upon the whole taxable real and personal property of the locality to be taxed, in proportion to the assessed value thereof, and not upon any property in particular.

§ 7. All lands shall be assessed in the township, village or ward in which they lie, and in the name of and against the owner if known, and if he resides or has a legal domicile then the assessment shall be made within such locality, and if such lands be occupied by such owner or wholly unoccupied; and if the owner be non-resident or unknown, and the land be occupied, then in the name of the occupant; and if the owner reside in the locality, then in the name of the owner or the occupant, and the taxes may be recovered from either, or from any future owner or occupant, saving his recourse against any other party; and if owned or occupied by more than one party, then any one or more of them may be deemed the owner or occupant and liable accordingly, saving his or their recourse against the others; and any occupant may deduct from his rent any taxes paid by him, if the same could have been recovered against the owner, unless there be a special agreement to the contrary.

§ 8. Unoccupied lands of non-residents unknown, to be assessed as hereinafter provided.

§ 9. Every party shall be assessed in the township, village or ward where he resides when assessment made, for all taxable *personal property* situate therein owned by him, including that in his possession or under his sole control as trustee, guardian, executor or administrator; and if owned or possessed by or under the control of more than one party, each shall be assessed for his share, and if held in a representative character, then for an equal portion.

§ 10. Taxes levied or assessed during the present year shall be taken to be the taxes for the year ending 31st December, 1850, and the current year afterwards shall commence on the 1st January and end the 31st December, unless otherwise expressly provided.

§ 11. Taxes in townships shall be rated and raised upon the estimate for each year; but in cities and incorporated towns or villages, the taxes shall be imposed by by-laws declaring the yearly rate in the pound on the yearly value of all taxable property, which shall be held to be *six* per cent. on the assessed actual value thereof.

§ 12. The overplus taxes of any township, exceeding the charges, shall go in reduction of the tax for the succeeding year for the same purpose, and if not required, then to the reduction of such other tax as the municipality shall direct; and, *vice versa*, if there be a deficiency, such deficiency shall go in increase of the tax for such purpose the succeeding year; but in cities and incorporated towns the amount assessed and levied shall form part of the general funds at the disposal of the corporation, unless otherwise specially appropriated.

§ 13. The yearly value of real property in cities or incorporated towns or villages shall be the real rack-rent or full yearly value thereof, except that if more than one-fourth of an acre of land be attached to any house or building forming a separate tenement, the overplus shall be held vacant ground, the full actual value whereof shall be estimated by the assessors, and the yearly interest on such value, at six per cent., shall be deemed its yearly value.

§ 14. Notwithstanding any act to the contrary, the number of assessors or collectors shall be one or more, in the discretion of the municipality or council, who may, in their discretion, appoint the same assessor or collector for any number of wards, or the whole city or town.

§ 15. The municipal council of any township, city, town or village, may divide the same into convenient assessment districts, and prescribe assessors' duties.

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§ 16. Assessors shall, between the 1st February and 1st April, in each year, ascertain by diligent inquiry the names of all the taxable inhabitants and parties in their respective localities, and all the taxable property therein, its extent, amount and value.

§ 17 specifies what shall be inserted in the assessment roll.

§ 18. Parties liable to assessment shall furnish assessors a statement in writing of the property or income assessable against such party in the form prescribed, and any wilful misstatement in any such declaration shall be a *misdemeanor* punishable as perjury; neglecting to deliver such statement shall subject the party to £5 penalty: provided that no such statement shall bind the assessors further than they shall, from their personal knowledge, believe the same to be correct, nor excuse them from making due inquiry to ascertain whether it is or is not correct.

§ 19. Trustees, guardians, executors and administrators shall be assessed accordingly in their representative character, separately from their individual assessment.

§ 20. Lands of non-residents shall be designated in the same assessment roll but separate from other assessments, and according to the directions given in the act.

§ 21. Taxable property (real and personal) shall be estimated at its full value (or full yearly value) as if appraised in payment of a just debt due from a solvent debtor.

§ 22. Every male inhabitant of every city, incorporated town or village, of the age of 21 and upwards, and not over 60, not otherwise assessed, and not now exempted by law from *statute labour*, shall, instead of such labour, be taxed 10s. yearly, to be collected as other local taxes, to the use of the corporation. Assessors shall return lists of persons liable, and give them notice with other parties assessed, and their names shall be entered on the collection rolls; and every male inhabitant of any township, between the ages aforesaid, and not otherwise assessed, shall be liable to *two* days *statute labour* on the roads and highways, in such township; and every party on the assessment roll shall, if the property of the party be assessed

At not more than £50,	be liable to	2 days of labour.
At more than £50 but not more than £100,	to 3 days	"
At more than £100 but not more than £150,	to 4 days	"
At more than £150 but not more than £200,	to 5 days	"
At more than £200 but not more than £300,	to 6 days	"
At more than £300 but not more than £400,	to 7 days	"
At more than £400 but not more than £500,	to 8 days	"
At more than £500 but not more than £600,	to 9 days	"

At more than £600 but not more than £800 to 10 days of labour.  
At more than £800 but not more than £1000 to 12 days "

And for every £200 above £1000, one day, unless the municipality shall direct by by-law, that a sum of money be paid in commutation, in which case all the provisions of this section as to the said tax of 10s., shall apply to the commutation money to be paid under such by-law: *Provided*, firstly, that the municipality of any locality may, by by-law, to operate generally and ratably, reduce or increase the number of days' labour, to which any party rated on the assessment roll or otherwise, shall be liable under this act.—Secondly, For want of sufficient distress to satisfy the said sum of 10s. and costs, the offender shall be committed by the board of the municipal corporation before whom complaint made, to the common gaol of the county, for any time not exceeding *six* days, unless sooner paid.

§ 23. Statute labour of non-residents fixed at 2s. 6d. for each day's labour, and added to the taxes payable by such non-residents, and collected as other taxes under this act.

§ 24. Assessment rolls shall be completed by such time as the council or municipality shall direct.

§ 25. Immediately after completion of the roll, the assessors shall leave for every party named thereon, and resident or domiciled within the locality, a notice of the assessment.

§ 26. Assessors also shall sign the assessment rolls with certificate attached, according to the form prescribed in the act.

§ 27. The roll so certified shall be delivered by the assessors to the clerk of the township, village, town or city, on or before the day appointed by the council, to be laid by him before the court of revision.

§ 28. Parties aggrieved, may within *six* days after notice of such assessment, or if a non-resident, then within *six* days after the return of the roll to the clerk, notify the clerk of the locality of such overcharge, and the complaint shall be tried by a court of *five* members of the city, town, or township council, to be appointed by such council, and at such time as the court shall appoint, reasonable notice being given to the complainant and to the assessors; and the court after hearing the complainant and the assessor and witnesses, or without hearing either of them who shall fail to appear, shall finally determine the matter, and affirm or amend the roll. Any *three* members shall be a *quorum*, and a majority of such quorum shall decide; and if any two members of the municipality or council (whether members of the court or not) shall think any party has been assessed too low, the clerk shall, on their request in writing, give reasonable notice to such parties and the assessor

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of the time when the matter will be tried by the court; or, if such party be a non-resident, shall insert such notice in some newspaper published in the locality, or if there be none, then in one published in the nearest place, giving in such notice the name of the parties, or description of the properties, if the name be not on the roll; and the matter shall be decided in the same manner as complaints by a party assessed; and the roll as finally passed by the said court and certified by the clerk, shall be valid and binding, notwithstanding any defect or error. Notice in writing under this section shall be left at the residence of the party; or if not resident, then with any grown person on the premises assessed, or where any of the personal property assessed shall be, or addressed to such party through the post-office, *three* days before the trial.

§ 29. Said court may, upon petition from any party assessed for any tenement vacant more than *three* calendar months in the year of the assessment made, or who from sickness or extreme poverty, shall declare himself unable to pay his taxes, or who by reason of any gross or manifest error in the roll, as finally passed by the court, shall have been overcharged more than 25 per cent., remit or reduce the taxes due by such party or reject such petition, as to them shall seem right, unless some by-law shall be in force to govern them in this behalf: and the council or municipality is hereby empowered to make, repeal or amend such by-laws from time to time.

§ 30. Said court may meet and adjourn from time to time at pleasure, and any member thereof may administer an oath to any party or witness, or issue summons to any witness to attend such court: and witness (being tendered compensation at the rate of 2s. 6d. per diem) failing to attend, shall incur a penalty of £5, to be recovered with costs by and to the use of the corporation: and the clerk of the corporation shall be the clerk of the court.

§ 31. Municipal council of the county shall direct by by-law the portion of taxes to be levied in each township or incorporated village: and the county clerk shall before the first day of August in each year certify to the clerk of the township or incorporated town or village the total amount to be levied therein in the then current year: and for the guidance of the municipal council, the clerk of each incorporated town, village or township, shall forthwith after the first revision of the assessment rolls for the same, transmit to the county clerk a statement of the aggregate value or yearly value (as the case may be) of all the taxable real property, and of the amount of all taxable personal property on the roll, as revised and passed.

## Assessments.

§ 32. Clerks of the city, town, village, or township, shall make out a collector's roll for their respective localities, according to the form prescribed.

§ 33. Collectors upon receipt of the roll shall call at least once on the party taxed, or at the place of his usual residence, if within the locality, and demand payment: taxes due by non-residents may be paid to the county treasurer, with five per cent. in addition, as remuneration: county treasurer shall pay the same over to the treasurer of the locality before the 14th December annually.

§ 34. In case of refusal or neglect to pay such taxes for the space of *fourteen* days after demand as aforesaid, the collector shall levy same with costs by distress and sale of the goods and chattels of defaulter, or of any goods or chattels in his possession wherever found within the locality: and no claim of property, lien, or privilege thereupon, or thereto, shall be allowed.

§ 35. Six days notice of sale shall be previously given by advertisement posted up in at least three public places in the locality.

§ 36. Surplus of sale shall be returned to the parties in whose possession the property was when distress made, if not claimed by another party: and if such claim be made and admitted, then to the real owner: but if contested, the surplus shall be paid over to the treasurer of the locality to be retained until rights determined by law or otherwise.

§ 37. In case of removal of any party after assessment, or if he shall neglect or refuse to pay within the county in which he shall reside, the collector may levy and collect such taxes in any locality which for judicial purposes shall be within the same county to which the party shall have removed, and, if not so recoverable, may be recovered with interest and costs as a debt due to the locality in any competent court: and such taxes shall be a special lien on the land, and bear interest from the time the same became due.

§ 38. The collector may receive the tax on any lot separately assessed, although the taxes on others against the same party be not paid, or upon any undivided part of any such lot: provided the person paying shall furnish in writing a statement of such undivided part, shewing who is the owner thereof: and if the tax on the remainder of such lot shall remain unpaid, the collector shall enter the substance of such statement in his return to the proper treasurer, to the end that such undivided part may be excepted from sale.

§ 39. Commissioner of crown lands within thirty days after the first of January shall yearly transmit to treasurers a list of

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granted or leased lands during the preceding year, to be again furnished by them to the clerks of localities.

§ 40. Collectors may receive taxes of non-residents, if tendered.

§ 41. Collectors shall return their rolls to the treasurer and pay over the amount on or before the 14th December yearly, or such other day as the municipal council shall appoint.

§ 42. Collectors shall render their accounts upon oath.

§ 43. Before the delivery of collectors' rolls the clerk shall furnish the treasurer with a correct copy of the non-residents' roll, to be entered by him in a book, together with the taxes charged upon such lands.

§ 44. And upon the return of the collector's roll to the treasurer, he shall enter the taxes charged and received upon such lands.

§ 45. The county treasurer or chamberlain shall prepare a list of lands in their localities upon which taxes remained due on the collector's return, distinguishing in separate columns the lots respectively, the amounts due for county rates, and the amounts due for township, village, town, or city rates; and shall within *one month* after receipt of collector's roll address a circular letter through the post to the owners, stating the amount due, and requiring payment: and in case the owner is unknown, or his residence, a list of such lands shall be published by the treasurer or chamberlain in the *Government Official Gazette*, with the amount due, and calling for payment and charging expense of publication against the lands.

§ 46. Treasurers of counties shall, on or before the *first* day of January, 1851, make out and submit to the municipal council a list of lands in their counties or in any cities or liberties within their limits, on which taxes remain unpaid, the number of acres, and years for which the taxes are in arrear, and the amount due on each lot for taxes under the wild land assessment law, and for assessments imposed by by-laws of the municipal councils, with the owners' names when known; and the said arrears shall be certified to the clerk of the proper locality by the county clerk, and added to the assessment roll for the year 1851, and collected in like manner, and the proper proportions so collected shall be accounted for and paid over to the treasurers of the several municipalities for their original purposes.

§ 47. In all cases where any township or part thereof shall have been detached from any district or county for the formation of any new district or county since the passing of the wild land assessment law, the treasurers of such districts or counties shall on or before the *first* day of January, 1851, meet together

at some convenient place and make a correct list of the arrears due in such townships up to the periods at which such lands became parts of new districts or counties, and the clerk of the county in which the township then actually lies shall include such arrears of taxes in his list of arrears of taxes due on such lands for the year 1851: and the county treasurer shall pay over to the treasurer of the former district such portion of the arrears accrued while such township was part of such district or county, reserving for the use of his own county that portion only of such arrears applicable for the improvement of the roads and bridges of such township, such payment to be made on or before the 1st January, 1852.

§ 48. The county treasurer or chamberlain shall, within thirty days after the collector's return, issue his warrant to the sheriff of the county, or high bailiff of the city, to levy on the lands of non-residents for the taxes then due thereon, with costs.

§ 49. The sheriff or high bailiff shall, within the then current year, cause the same to be executed, giving at least three months' notice, and shall make a return thereof to the county treasurer or chamberlain, and pay him the money levied; and the sheriff shall have for executing and returning such warrant 5s. for the sale of each separate lot, and three per cent. on the amount levied, and the remainder shall be paid over to the treasurer or chamberlain.

§ 50. Notice of the time and place of sale shall be given by advertisement inserted once in each month for four successive months, in some newspaper of the county or city where the real estate lies, and if no newspaper in that county, then in any adjacent county; the last advertisement to be at least one week before the sale.

§ 51. Further notice also shall be posted in some public place within the county or city *three weeks* before the sale.

§ 52. Notices shall state the names of the owners known, with the amount assessed, and if not known, the advertisement shall state the total amount of the taxes on the several lots to be so sold.

§ 53. If no person shall pay the taxes at the time and place appointed for the sale, the sheriff or bailiff shall sell by public auction so much of the lands as shall be sufficient to discharge such taxes, with the interest thereon and lawful charges, selling in preference such part as he may consider most for the owner's advantage to sell first, stating distinctly in the certificate to the purchaser what part of the lot is sold, or the whole lot, as the case may be.

§ 54. The sheriff or bailiff shall give a certificate to the purchaser, describing the lands sold, the quantity, sum and expenses of sale, and stating that a deed of conveyance will

be executed after the  
 § 55. period amount per cent sheriff and if taxes, to redeem sale, on ten per right to interest first three  
 § 56. assigns day of s gain, for ing tax treasurer  
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be executed by the sheriff or bailiff on demand, at any time after the expiration of *three* years, if the land be not redeemed.

§ 55. Holders of certificates shall pay the taxes during the period for redemption, and the same shall be added to the amount specified in the certificate, and shall be subject to ten per cent. interest, provided the holder shall have given the sheriff or bailiff notice and proof of the payment of such taxes; and if the holder of such certificate shall neglect to pay such taxes, the lands shall be again sold as before provided, subject to redemption by the first purchaser for *three* years from second sale, on payment of the amount paid by second purchaser, with ten per cent. interest, and without prejudice to the owner's right to redeem from either purchaser, on payment of the price, interest at the rate aforesaid, and costs, at any time during the *first* three years.

§ 56. The owner, his heirs, executors, administrators or assigns may redeem at any time within *three* years from the day of sale, by paying to the county treasurer or city chamberlain, for the use of the purchaser, the sum paid by him, including taxes paid since the sale, with ten per cent. interest: the treasurer or chamberlain's receipt to be evidence of redemption.

§ 57. If the land be not redeemed within the period for redemption, the sheriff shall, on demand, and on payment of *3s. 6d.*, execute a deed to the purchaser, with a certificate for registration, and the registrar shall be entitled to *3s. 6d.* for registering the same, and no more.

§ 58. The purchaser, before redemption, shall have the power to protect the land from spoliation or waste, and shall not knowingly permit any person to cut timber thereon or otherwise injure the land, nor do so himself, but may use the same without deteriorating its value.

§ 59. County treasurer, on receipt of non-residents' taxes, to pay over same, as soon as reasonably may be, to the treasurer of the proper locality.

§ 60. Treasurers and city chamberlain shall give security for the performance of their duties.

§ 61. Any assessor neglecting his duty shall forfeit £25, and the other assessor or assessors shall perform such duties until new appointment.

§ 62. Any assessor or collector making any unjust or fraudulent assessment or collection, or wilfully omitting any duty required by this act, shall be guilty of a *misdemeanor*, and, upon conviction, liable to a fine not exceeding £50, (and imprisonment till fine paid,) or to imprisonment in the common gaol for a period not exceeding six calendar months, or to both, in the discretion of the court; and proof to the satisfaction of the

jury that any real property was assessed by such assessor *thirty* per cent. greater or less than its actual value, shall be *prima facie* evidence that such assessment was fraudulent and unjust, and the assessor convicted of any fraudulent and unjust assessment shall be sentenced to the greatest punishment of fine and imprisonment imposed by this section.

§ 63. If any collector shall neglect to pay to the treasurer or chamberlain, or other person legally authorised to receive the same, the sums contained on his roll, such treasurer or chamberlain shall, within *twenty* days after payment due, issue his warrant to the sheriff or high bailiff, commanding him to levy the same, with costs, of the goods and chattels, lands and tenements of such collector, and to pay the same to the treasurer or chamberlain, and to return such warrant within *forty* days after date.

§ 64. Sheriff or bailiff shall within *forty* days cause such warrant to be executed, and pay money levied to the treasurer, or chamberlain, deducting for his fees the same compensation the collector would have been entitled to.

§ 65. If the sheriff or bailiff neglect his duty, or make a false return to the warrant, or neglect to make any return, or a sufficient return, it shall be lawful for the treasurer or chamberlain to apply to either of the superior courts in term time, or to any judge in vacation, for a rule or summons against such sheriff or bailiff, and upon hearing the matter the court or judge may order a writ of *fieri facias* to issue, directed to the coroner to levy of the goods and chattels of the sheriff or bailiff the amount in question, together with costs.

§ 66. Sheriff or high bailiff wilfully omitting to perform any duty required by this act, shall be liable to a penalty of 50*l.* for the use of the county.

§ 67. Interpretation clause.

§ 68. This act to come in force upon, from, and after the 1st day of January, 1851.

#### SCHEDULE, A.

*Personal Property liable to Taxation under the foregoing Act.*

All horses of three years old and upwards.

All neat cattle of three years old and upwards.

Pleasure carriages of all descriptions, and also all carriages kept for hire.

The average stock of goods on hand of every merchant, trader or dealer, manufacturer, tradesman or mechanic, such average stock to be considered to be the mean between the highest and the lowest amount of goods on hand at any time during the year.

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The amount of all stock or shares in steamers, schooners, or other water craft employed in the conveyance of freight or passengers, and owned within the municipality.

**SCHEDULE B.**

**COLUMN 1.** Name of taxable party.

- |   |   |
|---|---|
| " | 2. Number of concession, street, square, or other designation of the local division in which the real property lies.              |
| " | 3. Number of the lot, house, &c., in such division.   |
| " | 4. Number of acres, superficial feet, or other measure, shewing the extent of the property.                                       |
| " | 5. Value (or yearly value) of each separate lot or parcel of real property.   |
| " | 6. Total value (or total yearly value) of all the real property of such party.  |
| " | 7. Number of horses, three years old or upwards.  |
| " | 8. Value of the same.   |
| " | 9. Number of neat cattle, three years old or upwards.   |
| " | 10. Value of the same.  |
| " | 11. Number of pleasure carriages of all descriptions, or of carriages kept for hire.  |
| " | 12. Value of the same.  |
| " | 13. Value of the average stock of merchants, traders, dealers, manufacturers, tradesmen or mechanics.                             |
| " | 14. Value of stock or shares in steamers, schooners, and other water craft, employed for the conveyance of freight or passengers. |
| " | 15. Amount of taxable income.   |
| " | 16. Total value of taxable personal property.   |
| " | 17. Total yearly value of the same.   |

**NOTE.**—The yearly value of the real property will be set down in cities, and incorporated towns and villages, and the actual value in other places; in which, also, the column No. 16 may be omitted. In columns 2 and 3, any other description by which the property can be ascertained, may be set down, if the concession, street, square, or number be known.

**ASSESSORS.**

By the general Municipal Act, 12 Vic., c. 81, § 28, the municipality for each township shall, so soon as conveniently may be after their own election or appointment, nominate and appoint three assessors for the township, and one collector, who shall hold office from thence until the third Monday in January of the year next after their appointment, and until the appointment of successors.

§ 78. Town councils of incorporated towns shall appoint three assessors, and one collector for each ward.

By 13 & 14 Vic., c. 67, § 14, notwithstanding said act, 12 Vic., c. 81, the number of assessors or collectors for any city, town, village or township, shall be *one or more*, in the discretion of the municipality or council thereof; and such municipality or council may, in their discretion, appoint the same assessor or collector to act in and for any number of wards, or for the whole city or town.

#### ASSIZES.

By the \*2 Geo. IV. c. 1, § 27, it is enacted, that it shall be lawful for the lieutenant-governor, &c., to issue yearly, in the vacation, between Michaelmas and Trinity terms, such commissions of assize and nisi prius into the several districts, as may be necessary, for the purpose of trying all issues joined in the said court, in any suit or action arising in the several districts of this province; and that when a suitable communication by land shall be opened from the city, town or place, which shall be the seat of government, into the respective districts, and the circumstances of the province may require it, it shall be lawful for the lieutenant-governor, likewise to issue yearly, in the vacation between Hilary and Easter terms, such commissions of assize and nisi prius, into each of the several districts, for the trial of all issues joined as aforesaid.

§ 28. And nothing in this act contained shall be construed to prevent the issuing a special commission or commissions for the trial of offenders upon extraordinary occasions.

§ 31. The sheriffs of the several districts are required to make returns of all writs of nisi prius, which shall be delivered to them or their sufficient deputy, before the Chief Justice and every other judge assigned to execute such commissions, and shall give their attendance upon such judges, as well for the returning of such *tales de circumstantibus*, as shall be prayed for the trial of such issues, as for the maintenance of good order in the Queen's court, and for the doing and executing all other things to the office of sheriff appertaining.

#### ATTAINDER.

An *Attainder* is the *stain or corruption of the blood* of a criminal capitally condemned, and is the immediate and inseparable consequence, by the common law, of pronouncing sentence of death against him, he being then called *attaind attinctus*—that is, stained or blackened.—4 Bl. Com.

A person *attainted* is no longer of any credit or reputation; he cannot be a witness in any court, neither is he capable of performing the functions of another man; for, by a sort of

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anticipation of his punishment, he is already dead in law.—*3 Inst.* 213; *4 Bl. Com.* 380. Indeed, it was formerly holden, that any one might as lawfully kill a person attainted of treason or felony, as a wolf or other wild beast; though now, a malicious killing of any such person, there is no doubt, would be murder.—*1 Haw. c.* 28, § 8; *Ibid. c.* 31, § 15.

The attainder commences upon the judgment of death, or judgment of outlawry on a capital crime.—*4 Bl. Com.* 380.

But attainder does not follow until *after* judgment.—*Ibid.*

The immediate consequences of attainder were the forfeiture of all the real and personal estates of the party attainted, and the corruption of his blood both upwards and downwards; so that an attainted person could neither inherit lands from his ancestors, nor retain those he was already in possession of, nor transmit them by descent to any heir.

By an attainder for *high treason*, a man forfeits to the Queen all his lands, &c.—*26 H. VIII. c.* 13; *33 H. VIII. c.* 20; and see *4 Bl. Com.*

This forfeiture relates back to the time of the treason committed, so as to avoid all intermediate acts. A wife's dower is expressly forfeited by *5 & 6 Edw. VI.*

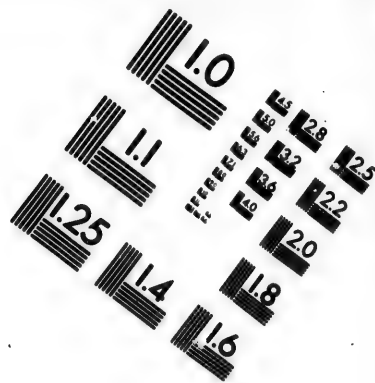
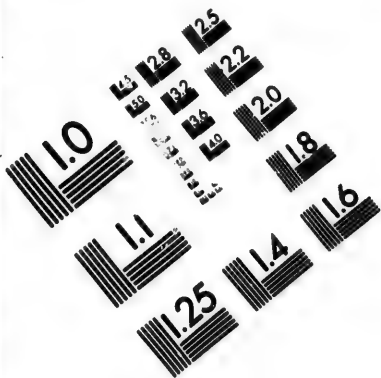
By *7 Ann. c.* 21, it was enacted, that after the death of the then pretender, no attainder for *high treason* should extend to the disinheriting of any heir, nor to the prejudice of any person other than the traitor himself: by which, says *Blackstone*, the law of *forfeitures* for high treason would by this time have been at an end, had not a subsequent statute (*17 Geo. II., c.* 39), intervened to give them a longer duration. By this statute, the operation of the statute of *Ann* was still further suspended, till the death of the sons of the pretender.—*4 Bl. Com.* 384.

In a certain kind of treason, however, namely—that relating to the coin, it is provided by the *5 Eliz. c.* 11, and *18 Eliz. c.* 1, that it shall work no forfeiture of lands, save only for the life of the offender, and that it should not deprive the wife of her dower.—See *8 & 9 W. III. c.* 26, and *15 & 16 Geo. II. c.* 28.

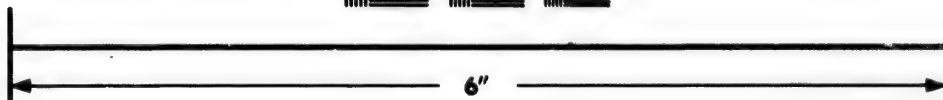
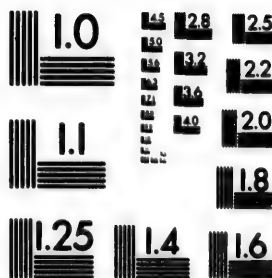
In *petit treason and felony*, the offender forfeits to the Queen all his chattel interests absolutely; and the profits of all estates of freehold during life; and after his death, all his lands and tenements in fee simple, (but not those in tail) for the space of a year and a day.—*2 Inst.* 37; *4 Bl.* 385.

The forfeiture relates back to the time of the offence committed, so as to avoid all intermediate acts.—*4 Bl. Com.* 385; *2 Haw. c.* 49, § 17.

Lands are only forfeited upon *attainder*, but goods and chattels upon *conviction*. The forfeiture of goods has no relation backwards; those only which a man has at the time of his



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conviction are actually forfeited. Therefore, a traitor or felon may, *bona fide*, sell any of his chattels, real or personal, for the sustenance of himself and family, previous to conviction: but not if they be collusively, and not *bona fide*, parted with, and the object of the transfer be merely to defraud the crown.—13 Eliz. c. 5; 3 Inst. 232; 2 Haw. c. 49, § 33; 4 Bl. Com. 388.

By 3 Wm. IV., c. 5, entitled "An act to take away corruption of blood in certain cases," it is enacted, that no attainder for felony, after the passing of this act, except in case of high treason, or of abetting, procuring, or counselling the same, shall extend to the disinheriting of any heir, nor to the prejudice of the right or title of any person other than the offender, during his or her life only; and it shall be lawful for any person to whom the right in any lands or tenements, after the death of such offender, would have appertained if no such attainder had been, to enter into the same.

By statute 4 & 5 Vic., c. 24, § 17, no plea setting forth any attainder shall be pleaded in bar of any indictment, unless the attainder be for the same offence as that charged in the indictment.

§ 21. Where any offender convicted of felony not punishable with death, shall endure the punishment adjudged for the same, the punishment so endured shall have the like effects and consequences as a pardon under the great seal, as to the felony whereof the offender was so convicted: but shall not mitigate any punishment on a subsequent conviction for any other felony.

### AUCTIONS.

\*By 58 Geo. III., c. 6, every auctioneer shall take out a license; and by § 2, pay for the same, annually, 5*l*. By § 4, any person neglecting to take out such license, on or before the 5th January in every year, and continuing to exercise the trade of an auctioneer, or who shall neglect to exhibit in a conspicuous manner at his auction room, his name and trade as such auctioneer, shall, upon the oath of one or more witnesses other than the informer, for each and every offence forfeit and pay 20*l*., to be recovered before any three justices, to be levied by distress and sale, with reasonable costs; and in default, commitment to the common gaol of the district for any time not exceeding six months. § 9. One moiety shall go to the province, and the other to the informer. § 12. Actions must be commenced within six months. § 13. This act continued in force four years, and to the end of the next session, and was continued by \*4 Geo. IV., c. 17, and further continued for four years by \*9 Geo. IV., c. 10, and re-continued for four years by the \*4 Wm. IV., c. 41.



\*By the 3 Vic., c. 23, § 1, the \*58 Geo. III., c. 6, is re-enacted, revived and made perpetual. And by the 4 & 5 Vic., c. 21 § 12, the duty payable on sales by auction under the \*58 Geo. III., c. 6, or any other act shall be *one per cent.* and no more.

For the forms of proceeding to recover penalties under this act, see "information," "summons," and "conviction."

### AUTREFOIS ACQUIT.

The plea of *Autrefois Acquit*, is a plea by a criminal that he was heretofore acquitted of the same treason or felony; and is grounded upon an universal maxim of the common law of England, that no man shall be brought into jeopardy of his life twice for the same offence.—2 Inst. 213; 4 Co. 40; 2 Haw. c. 35, § 1.

The whole of the record of acquittal must be set forth in the plea, in order that the court may see whether the prisoner was *legitimo modo acquietatus*.—*R. v. Wildey*, 1 M. & S. 183.

The plea must plainly show that the party was lawfully acquitted by *verdict*; for if no bill was preferred against the prisoner, or even no true bill found by the grand jury, so that at the end of the sessions he is quit by proclamation and discharged, he may still be afterwards indicted; for this amounts to no acquittal.—2 Hale, 246.

But if an erroneous judgment be reversed by writ of error, the party may, in that case, be indicted *de novo*.—2 Hale, 247.

And if the party be acquitted from any insufficiency in the indictment, such an acquittal is in general not pleadable upon a second indictment, because the prisoner's life, in this instance, was never placed in jeopardy, and therefore the reason for the plea entirely fails.—2 Hale, 248; 4 Co. 44, 45; 1 Star. 302; *Rex v. Reading*, 2 Leach, 593, per Buller, J.

But then the insufficiency of the indictment should appear in the record of the judgment of acquittal.—2 Hale, 395.

When the defendant has been tried by a *foreign tribunal* of competent jurisdiction, it seems clear that an acquittal before such tribunal will equally emure to his defence in this country; but, in this case, he should produce an exemplification of the record of his acquittal, under the public seal of that state or kingdom where he has been tried and acquitted.—*Hutchinson's case*, 3 Kes. 735; *Beak v. Thyrohit*, 3 Mod. 194; 1 Shore, 6; *Bull N. P.* 245.

The identity of the party must be shown, by averment in the plea that he was the same person charged in the former indictment. And though he be described differently in the two indictments—as, if in the first place he be styled *yeoman*, and in the second *gentleman*, yet he may aver that he only was the person meant under each addition.—2 Haw. c. 35, § 2.

The identity of the offence must appear as well in law as in fact.—1 *Star.* 804.

Thus, an acquittal on an indictment for *felony* is no bar to an indictment for a misdemeanor.—2 *Haw. c.* 35, § 5.

And an acquittal as *accessory after the fact*, cannot be pleaded to a subsequent indictment as *principal*; and the same *é converso*.—2 *Hale*, 244; *Fost.* 361; *Staundf.* 105.

If a man be acquitted generally upon an indictment for *murder*, *autrefois acquit* is a good plea to an indictment for *manslaughter* of the same person; and *é converso*, if he be indicted of *manslaughter* and acquitted, he shall not be afterwards indicted for the same death as *murder*.—4 *Co. Rep.* 46, 6; *Holcroft's case*, 2 *Hale*, 246; *Fost.* 329; 1 *Star.* 305.

But if A. commit a *burglary*, and at the same time steal goods out of the house, and he be indicted for the *larceny only* and acquitted, he may still be indicted for the *burglary*.—2 *Hale*, 245.

And so *é converso* (Lord Hale says) if he be indicted for the *burglary* and acquitted, he may still be afterwards indicted of *larceny*.—*Ib.* 246.

But the converse of this proposition must be received with this limitation, viz., that the indictment for the burglary lay the offence only with an *intent to steal*, and not with an *actual larceny*; for, if laid with an actual larceny, a general acquittal would of course include an acquittal of the larceny itself.—1 *Star.* 309.

If A. commit a *robbery* in the county of B. and carry the goods into the county of C. and be there indicted for *larceny only*, an acquittal upon such an indictment is no bar to an indictment for the *robbery* in the county of B.—2 *Hale*, 245, 246.

For the same reason, if an indictment for *murder* is brought in an *improper county*, an acquittal upon such indictment cannot be pleaded to a subsequent indictment in the proper county.—2 *Haw. c.* 35, § 3; *Contra Staundf.* 105.

But if a man steal goods in one county and carry them into another, as he may be indicted for the larceny in either county, it seems that an acquittal in one county would be a bar to a subsequent prosecution for the same stealing in the other county.—1 *Haw. c.* 35, § 4.

Yet it hath happened, says Lord Hale, that a man acquitted for stealing a *horse*, hath afterwards been convicted for stealing the *saddle*, though both were taken at the same time.—2 *Hale*, 246.

Where there is a variance between the record of the former acquittal and the indictment to which it is pleaded, yet, if the nature of the crime be in substance the same, the variance may

generally be helped by proper averments in the plea.—2 *Haw. c. 35, § 3.*

As, if a man be acquitted upon an indictment for murder, charged to be committed on one day, and be afterwards indicted for murder alleged to have been committed on another day, he may plead *autrefois acquit*, alleging the supposed offence to be the same; for the day is not material, and the death is of a person certain, who can be but once killed.—2 *Hale, 244.*

So, if a man be acquitted of an indictment for murder or robbery of J. S. and he be afterwards indicted for the murder or robbery of J. N. he may plead *autrefois acquit*, and aver the person to be the same, notwithstanding the variance in the surname; for a man, it is said, may have many surnames.—*Ib.*; 2 *Haw. c. 35, § 3.*

But where a prisoner was acquitted on an indictment for forgery, on a variance between the instrument produced and that recited in the indictment, it was held that he could not plead *autrefois acquit* to another indictment for the same offence, which set forth the instrument correctly.—*R. v. Coogan, 1 Leach, 448; R. v. Reading, 2 Leach, 593, per Buller, J.*

The plea of *autrefois acquit*, in *R. v. Coogan*, was taken *ore tenus*, and the court rejected the record of the acquittal as insufficient proof of the plea. But if the plea had been in writing, and there had been an averment that the instrument set out in the first indictment, and that set out in the second, were in fact the same, it seems to be reconcilable with what is said in 2 *Haw. c. 35 § 3, 4*, that such a plea would have been available.—*Deacon's C. L. 96.*

An accessory may plead the acquittal of his principal; for if there be no principal there can be no accessory.—2 *Hale, 524; 3 Inst. 139.*

So, if A. charged with a felony, breaks prison, and be acquitted of the principal felony, he may plead that acquittal to any indictment for felony, in the breach of prison.—*Sawford's case; 1 Hale, 611, 612; 2 Hale, 254.*

### **Practice.**

The prisoner is not entitled to a copy of the indictment to enable him to plead *autrefois acquit*; but he has a right to have the indictment read very slowly and distinctly over to him.—*R. v. Vandercomb, 2 Leach, 711.*

The plea, as well as the replication, may in general be pleaded *ore tenus*.—*R. v. Coogan, 1 Leach, 448.* But the replication of *nil tibi reced* cannot be pleaded *ore tenus*, except by the attorney-general, but must be written on parchment, and handed in to the court.—2 *Leach, 715, note (a).*

If the indictment be for *felony* or treason, the defendant, besides the plea of *autrefois acquit*, should also plead over to the felony or treason.—*Hale, Sum.* 249; *R. v. Vandercomb*, 2 *Leach*, 708.

The court upon issue joined as to the identity of the person or the offence, awards a *venire* returnable *instante*; and upon the sheriff making his return, the jury are immediately sworn to try the issue of *autrefois acquit*, the counsel for the prisoner having leave to address the jury in support of the affirmative of the issue.—*R. v. Sheen*, 1 *Carr. & P.* 638; 1 *Leach*, 476.

*Record of Acquittal.*—(*Cr. Cir. Com.*)

County of York, } Be it remembered, that at the general quarter  
to wit. } sessions of the peace of our Sovereign Lady  
the Queen, holden at the city of Toronto, in and for the said  
county of York, on — the — day of —, in the year, &c.,  
before W. M., K. R., R. R., and Z. Z., Esquires, justices of our  
said lady the Queen assigned to keep the peace of our said  
lady the Queen in and for the said county of York, and also to  
hear and determine divers felonies, trespasses and other mis-  
deeds, committed in the said county, by the oath, &c., (*the  
grand jury stating all their names*) good and lawful men of  
the county aforesaid, then and there sworn and charged to  
inquire for our said lady the Queen, for the body of the said  
county, it is presented in manner and form as followeth, that  
is to say,—county of York, to wit. The jurors, &c. (*recite the  
whole indictment*). Whereupon the sheriff of the said county  
of York is commanded that he cause the said A. B. to come to  
answer, &c. and afterwards, to wit, at the same session of the  
peace, holden at the city of Toronto aforesaid in and for the  
said county of York, by adjournment, on *Wednesday*, the —  
day of the same month of —, in the year aforesaid, before  
the justices of our said lady the Queen above named, and  
others their fellows aforesaid, cometh the said A. B. in his own  
proper person, and having heard the said indictment read, the  
said A. B. saith that he is not guilty thereof, and concerning  
thereof he putteth himself upon the country; and — Esquire,  
clerk of the peace for the said county of York, who prosecutes  
for our said lady the Queen, in this behalf doth the like;  
therefore let a jury thereupon come before the justices of our  
said lady the Queen, at the next general quarter sessions of the  
peace of our said lady the Queen, to be holden at the city of  
Toronto, aforesaid, in and for the said county of York, by whom  
the truth of the matter may be better known, and who have no  
affinity to the said A. B., to recognise upon their oath, if the said  
A. B. be guilty of the premises aforesaid or not; because as well  
the said —, who prosecutes for our said lady the Queen in this

behalf, as the said A. B. have put themselves on that jury, the same day is given as well to the said — who prosecutes for our said lady the Queen in this behalf, as to the said A. B., at which said next general quarter sessions of the peace of our said lady the Queen, holden at the said city of Toronto, in and for the County of York aforesaid, on *Monday*, the — day of —, in the said — year of the reign of our said lady the Queen, before W. M., G. H., F. P., and S. T., Esquires, and others their fellows, justices of our said lady the Queen assigned to keep the peace of our said lady the Queen in and for the county aforesaid, and also to hear and determine divers felonies, trespasses and other misdeeds, committed in the same county, cometh as well the said —, who prosecutes for our said lady the Queen in this behalf, as the said A. B. in his own proper person; and the jurors of that jury, by —, Esquire, sheriff of the said county, to this matter empannelled and returned—to wit, (*the names of the petit jury*) being called, come, who being chosen, tried and sworn, to speak the truth of and upon the premises in the indictment aforesaid, above specified, do say, upon their oath, that the said A. B. is not guilty of the trespass and offence aforesaid, in the indictment aforesaid, above specified, in manner and form as the said A. B., for himself above by his plea hath alleged; whereupon it is considered by the court here, that the said A. B. of the trespass (*or felony*) and offence aforesaid, in the indictment aforesaid, above specified, be discharged and go thereof without day.

### AUTREFOIS ATTAINT.

A person once *attainted* of felony, being *civilliter mortuus*, and his property being forfeited to the king, cannot in general be indicted again for another felony—whether committed before or after his *attainder*—on the ground that, as he had forfeited all that he could forfeit, a prosecution for any other offence would be useless. A plea of *autrefois attainé*, therefore, is a good bar to an indictment for the same or any other felony of the like description.—2 *Haw. c. 36*; 4 *Bl. Com. 336*.

But as this rule is one rather of expediency than otherwise, it does not follow that after an *attainder* the party attainted may commit other felonies of a higher description, such as murder, rape, and the like, with impunity. A plea of *autrefois attainé* will therefore, in such cases, or for other capital offences, be of no avail; and the party may be indicted and convicted, in order that he may undergo the higher degree of punishment—*forfeiture of goods* being only of secondary consideration in such cases.

## AUTREFOIS CONVICT.

This plea (like that of *autrefois acquit*) can in general only be pleaded for the same identical felony; it is (like that also) founded on the principle, that a man is not again to be placed in jeopardy for the same offence; and still less so, if he has already (as in this case) suffered the penalty due for it.—2 *Haw. c. 36* § 10; 4 *Bl. Com.* 336.

And though no judgment may have been given upon the former conviction, still the plea of *autrefois convict* is a good bar to a second indictment for the same offence.—2 *Haw. c. 36*, § 14.

*Record of Conviction*—See "*Autrefois Acquit*."

—do say upon their oath, that the said A. B. is guilty of the trespass and offence aforesaid in the indictment aforesaid, above specified, in manner and form as by the said indictment above against him is alleged; whereupon it is considered by the court here, that the said A. B., for the trespass and offence aforesaid, in the indictment aforesaid, above specified, be taken, &c., which said A. B. being present here, is fined for the said trespass and offence three shillings and four pence, which he paid to the sheriff of the said county, in court, to the use of our said lady the Queen; and the said A. B. is committed to the common gaol, at the city of Toronto aforesaid, in the said county, there to remain and be kept to hard labour for the space of six calendar months.

## BAIL.

*Bail* (from the French word *bailier*, "to deliver") signifies the delivery of a man out of custody, upon the undertaking of one or more persons for him that he shall appear at a day limited, to answer and be justified by the law.—*Hale's P. C.* 96.

If a person be brought before a justice, and it appear that no felony has been committed, he may discharge him; but if it appear that a felony has been committed, though it appear not that the party accused is guilty, yet the justice cannot discharge him, but must bail or commit him.—*Ibid.* 96.

At the common law, bail was allowed in all cases but homicide; until the statute 3 *Ed. I* c. 15, which directs what offenders shall be bailed, and what not.—*Hale's P. C.* 97; and by statute 1 & 2 *P. and M. c.* 13, any person arrested for manslaughter or felony, or suspicion thereof, being bailable by law, shall not be bailed by any justices but in open session, except it be by two justices at the least, and the same to be present together at the time of the bailment.

By 4 & 5 *Vic.*, c. 34, reciting that it was expedient to define under what circumstances persons may be admitted to bail in



cases of felony, and to make better provision for taking examinations, informations, bailments and recognizances, &c., it is enacted, that where any person shall be taken on a charge of felony, or suspicion of felony, before one or more justice or justices of the peace, and the charge shall be supported by positive and credible evidence of the fact, or by such evidence as if not explained or contradicted, shall, in the opinion of the justice or justices, raise a strong presumption of the guilt of the person charged, such person shall be committed to prison by such justice or justices in the manner hereinafter mentioned—but if there shall be only one justice present, and the whole evidence given before him shall be such as neither to raise a strong presumption of guilt, nor to warrant the dismissal of the charge, such justice shall order the person charged to be detained in custody, and such person shall be taken before two justices at the least; and where any person so taken, or any person in the first instance taken before two justices of the peace, shall be charged with felony, or on suspicion of felony, and the evidence given in support of the charge shall, in the opinion of such justices, not be such as to raise a strong presumption of the guilt of the person charged and to require the committal of such person, or such evidence shall be adduced on behalf of the person charged as shall, in the opinion of such justices, weaken the presumption of guilt, but there shall notwithstanding appear to such justices, in either of such cases, to be sufficient ground for judicial inquiry into the guilt of the person charged, such person shall be admitted to bail by such two justices in the manner hereinafter mentioned: Provided always, that nothing hereinafter contained shall be construed to require any such justice or justices to hear evidence on behalf of any person so charged as aforesaid, unless it shall appear to such justice or justices to be meet and conducive to the ends of justice to hear the same. § 2. That two justices of the peace, before they shall admit to bail, and one or more justice or justices, before he or they shall commit to prison any person arrested for felony, or on suspicion of felony, shall take the examination of such person, and the information upon oath of those who shall know the facts and circumstances of the case, and shall put the same, or as much thereof as shall be material, into writing, in the presence of the party accused, if he be in custody, who shall have full opportunity afforded him of cross-examining such witnesses, if he shall think proper so to do, and the two justices admitting to bail shall certify the bailment in writing; and every such justice shall have authority to summon any person within his jurisdiction, whom he shall have reason to consider

capable of giving material evidence concerning any such felony, or suspicion of felony, and to examine such person on oath touching the same, and to bind by recognizance all such persons as know or declare anything material touching any such felony, or suspicion of felony, to appear at the next Court of Oyer and Terminer, or gaol delivery, or other court at which the trial of such offence is intended to be had, then and there to prosecute and give evidence against the party accused; and such justice and justices respectively, shall subscribe all such examinations, informations, bailments, and recognizances, and deliver, or cause to be delivered, the same to the proper officer of the court in which the trial is to be, before or at the opening of the court; and in case any person so summoned shall refuse to submit to such examination or to enter into such recognizance, it shall be lawful for the justice or justices to commit such person to the common gaol of the district, county, city or town, until such person shall submit to such examination, or shall enter into such recognizance, or be discharged by due course of law: Provided, that no such examination shall subject the party examined to any prosecution or penalty, or be given in evidence against such party, save on any indictment for having committed wilful and corrupt perjury in such examination. § 3. That every justice of the peace before whom any person shall be taken on a charge of misdemeanor, or suspicion thereof, shall take the examination of the person charged, and the information upon oath of those who shall know the facts and circumstances of the case, and shall put the same, or as much thereof as shall be material, into writing, before he shall commit to prison or require bail from the person so charged; and in every case of bailment shall certify the bailment in writing, and shall have authority to bind all persons by recognizance to appear to prosecute or give evidence against the party accused in like manner as in cases of felony; and shall subscribe all examinations, informations, bailments and recognizances, and deliver or cause to be delivered the same to the proper officer of the court in which the trial is to be, before or at the opening of the court, in like manner as in cases of felony, and that no traverse or other postponement of any trial thereupon had, shall be allowed, except upon special cause shewn to the satisfaction of the said court or by consent of the prosecutor. § 4. That every coroner, upon any inquisition taken before him, whereby any person shall be indicted for manslaughter or murder, or as an accessory to murder before the fact, shall, in presence of the party accused, if he can be apprehended, put in writing the evidence given to the jury before him, or as much thereof as shall be

material, giving the party accused full opportunity of cross-examination; and shall have authority to bind by recognizance all such persons as know or declare anything material touching the said manslaughter or murder, or the said offence of being accessory to murder, to appear at the next Court of Oyer and Terminer, or gaol delivery, or other court at which the trial is to be, then and there to prosecute or give evidence against the party charged; and every such coroner shall certify and subscribe the same evidence, and all such recognizances, and also the inquisition before him taken, and shall deliver the same to the proper officer of the court in which the trial is to be, before or at the opening of the court. § 5. That when and so often as any person shall be committed for trial by any justice or justices, or coroner as aforesaid, it shall and may be lawful for such prisoner, his counsel, attorney or agent, to notify the said committing justice or justices, or coroner, that he will, so soon as counsel can be heard, move her Majesty's court of superior jurisdiction for that part of the province in which such person stands committed, or one of the judges thereof, for an order to the justices of the peace, or coroner for the district where such prisoner shall be confined, to admit such prisoner to bail, whereupon it shall be the duty of such committing justice or justices, or coroner, with all convenient expedition to transmit to the office of the clerk of the crown, close under the hand and seal of one of them, a certified copy of all informations, examinations, and other evidences, touching the offence wherewith such prisoner shall be charged, together with a copy of the warrant of commitment and inquest, if any such there be, and that the packet containing the same shall be handed to the person applying therefor, in order to such transmission, and it shall be certified on the outside thereof to contain the information touching the case in question. § 6. That upon any application to her Majesty's court of superior criminal jurisdiction for that part of the province within which such person stands committed, or to any judge thereof, the same order touching the prisoner being bailed or continued in custody, shall be made as if the party were brought up upon a *habeas corpus*. § 7. That if any justice or coroner shall neglect or offend in anything contrary to the true intent and meaning of any of the provisions of this act, it shall be lawful for the court to whose officer any such examination, information, evidence, bailment, recognizance, or inquisition ought to have been delivered, and such court is hereby authorised and required, upon examination and proof of the offence, in a summary manner, to set such fine upon every such justice or coroner as the court shall think meet. § 8. That the pro-

visions of this act relating to justices and coroners, shall apply to the justices and coroners not only of districts and counties at large, but also of all other jurisdictions. § 51. All former acts inconsistent with this repealed.

By the declaration of rights, 1 W. session 2, c. 2, excessive bail ought not to be required. To refuse bail where the party ought to be bailed, (the party offering the same) is a misdemeanor, punishable not only by the suit of the party, but also by indictment.—2 *Haw.* 90 *H. P.* 97. And to admit bail where it ought not to be admitted, is punishable by the judges of assize by fine, or punishable as a negligent escape at common law.—*H. P.* 97; and so if a justice take insufficient bail.—*Id.* A justice of the peace cannot take bail for murder.—2 *Inst.* 186. And if a person be dangerously wounded, the justice ought to be very cautious how he takes bail, till the year and day be passed, for if the party die, and the offender appear not, the justice is in danger of being severely fined.—1 *Haw.* 138. The court of King's Bench, however, may admit a person to bail who has been committed for murder, if they think the circumstances of the case will justify their doing so. *Lord Mohun's case*, 1 *Salk.* 104; *R. v. McGrath*, *Str.* 1242. If the bail taken be insufficient, the justice may require better sureties, and commit the party on refusal.—2 *Haw.* 89.

#### *Acknowledging Bail in another man's name.*

By statute 21 I., c. 26, if any person shall acknowledge, or procure to be acknowledged, any bail in the name of any other, not privy to the same, he shall be guilty of felony without benefit of clergy. Bail taken before a judge is not within this statute till it is filed of record.—1 *H. H.* 696. But it is within the following statute of 4 Wm. c. 4, which enacts, "that any person who shall personate another before those who have authority to bail, so as to make him liable to the payment of any sum of money in that suit or action, shall be guilty of felony." If bail cannot otherwise be obtained, the law hath also provided a remedy by the *habeas corpus* act.—31 C. 2. See *post* title, "*Habeas Corpus*."

#### BANISHMENT.

"By statute 3 Wm. IV. c. 4, § 5, all other felonies, (except capital) may be punished by banishment; (see *post* title "Punishment.") And by statute 40 Geo. III. c. 1, § 5, the offender shall remove himself within a space of time to be fixed by the court, being not less than two days, nor more than eight, including the day on which sentence was passed.

BANKERS.

\*By 7 Wm. IV. c. 13, § 1. It shall not be lawful (except in the cases hereinafter mentioned), for any person or number of persons associated without legislative authority, or incorporated for any other purpose than banking, to make or issue any bill, note, or undertaking of any description, or in any form in the nature of a bank bill or note, and intended to pass as money; and if any bill, note, or undertaking shall be issued or put in circulation contrary to this act, such bill, note, or undertaking shall be void; and any mortgage or other deed, bond, note, bill, or other security which may be taken for securing any loan or advance made in such bills, notes, or undertakings, shall be void. § 2. If any person shall act as president, director, cashier, or other officer of any association of persons acting in violation of this act, such person shall, on conviction thereof before any court of Oyer and Terminer or general gaol delivery, be deemed guilty of a misdemeanor. § 3. If any person shall knowingly utter or tender in payment or in exchange, any bill or note in the nature of a bank note, which shall not have been issued by some person or association of persons or body corporate, legally authorised to issue such bill or note within this province, or within the county in which such note or bill shall have first issued, such person shall be guilty of a misdemeanor. § 4. This act not to apply to The Bank of British North America,—the Farmers' Joint Stock Banking Company,—the Agricultural Bank,—or to the Bank of the People, or to the Niagara Suspension Bridge Bank.

BANKING.

By 13 Vic. c. 21, entitled "An act to establish freedom of Banking in the province, and for other purposes relative to Banks and Banking:" § 8. Any individual or co-partnership may carry on the business of banking in this province at some one place, being a city, town or village. § 9. Joint Stock Banks to be composed of not less than five persons, and the whole capital not less than 25,000*l.*; shares not less than 10*l.* each; articles of co-partnership to be filed in the office of the clerk of the county court. § 10. Shareholders to be liable for twice the amount of their shares, and no more. § 13. Banks not to commence business until they have deposited with the Receiver-General, provincial debentures or securities to the amount of 25,000*l.*, to be held in pledge for redemption of the bank notes of the bank. § 14. Upon such deposit being made Inspector General authorised to deliver to the bank, bank notes for not less than 5*s.* each, numbered, registered and counter-

signed by him, not exceeding the amount deposited, for circulation, so long as the bank shall pay such notes in specie on demand. § 15. Banks may make further deposits not less than 5,000*l.* at one time, and increase their circulation accordingly. § 17. If any bank note shall not be paid in specie, on demand at the bank, the same may be protested and forwarded to the Inspector General, who shall then by letter require the bank to pay the same, with costs of protest and postage and interest, within ten days, or the bank shall be closed (unless there be a legal defence for nonpayment of such note), and notice thereof given in the *Gazette* by the Inspector General, stating that he will redeem the notes to the extent of the funds deposited; provision is then made for appointing a receiver for settling the affairs of the bank, who is authorised to take possession of bank property, books and papers; and any banker, partner, associate or shareholder, or any director, manager, officer or servant of such banker or bank, or other person who shall have been entrusted with the same without having any legal title to or lien thereupon, who shall have any money, property, securities, books, accounts, papers or documents of the bank in his possession or under his control, and shall not forthwith deliver the same to the said receiver, on demand, shall be held to have *fraudulently embezzled* the same, and shall be punishable accordingly; and the receiver may recover possession of the same, as any party may recover property fraudulently embezzled: the receiver shall settle the affairs of the bank, and report thereon to the Inspector General, who shall sell the deposits and apply the proceeds *first* in redemption of the bank notes, and *then* in payment of other liabilities. The act then provides for the way in which the business and affairs of the bank are to be wound up: a schedule of bank liabilities and assets is to be filed in the county court, and a day appointed by the judge for settling disputed claims, with power to appeal to the court of Queen's Bench against his decision. § 22. The bank may also be closed if it permit any judgment against it to remain *three months* unsatisfied, and no appeal pending. § 24. Every bank shall keep in the office a list of shareholders open to the public, and deliver copies of the bank articles to any person on demand, on payment of 7*d.*, under a penalty of 100*l.* § 27. The total liabilities of the bank never to exceed *three* times the amount of its capital, under a penalty of 100*l.* per diem for the excess. § 28. No dividend to be made out of bank capital. § 30. Half-yearly accounts (on 1st January and 1st July) to be rendered by the bank to the Inspector General, of bank assets and liabilities, under a penalty of 25*l.* per diem for neglect, and if not transmitted within a month, the bank may be closed. § 36.



A general statement of all the banks under this act to be laid before the legislature within thirty days after the opening of each session.

### BANK NOTES.

By 4 & 5 Vic. c. 29, § 1, banking companies are required to deliver a statement in writing on the 15th May and the 15th November annually, to the receiver-general, of the amount of notes or bills issued and in circulation at the end of each calendar month, certified by the cashier and president; and the person or persons so certifying, shall make and sign a declaration in writing before a justice of the peace, that he or they had the means of knowing that such statement was correct, and that it is so to the best of his or their knowledge and belief. § 2. Any wilful false allegation in any such statement shall be a misdemeanor, punishable as for perjury. § 3. A duty of one per cent. per annum, imposed on the average amount of notes and bills in circulation *pro tem*. § 4. The bank or party neglecting or refusing to deliver such statement, shall forfeit to her Majesty 1000*l*. for the use of the province, to be recovered with costs, as any other debt of the crown.

By 4 & 5 Vic. c. 93, § 13, counterfeiting bank notes is made a misdemeanor. See further on this subject, *post* title "Coin."

### BANKS OF RIVERS.

By 4 and 5 Vic. c. 26, § 12, it is enacted, that if any person shall unlawfully and maliciously break down, or cut down any sea-bank or sea-wall or the bank or wall of any river, canal, or marsh, whereby any land shall be overflowed or damaged, or shall be in danger of being so, or shall unlawfully or maliciously throw down, level, or otherwise destroy any lock, sluice, floodgate or other work, on any navigable river or canal, every such offender shall be guilty of felony, and being convicted thereof shall be imprisoned for any term not exceeding four years; and if any person shall unlawfully and maliciously cut off, draw up, or remove any piles, chalk, or other materials fixed in the ground, and used for securing any sea-bank or sea-wall, or the bank or wall of any river, canal, or marsh, or shall unlawfully or maliciously open or draw any flood-gate, or do any other injury or mischief to any navigable river or canal, with intent and so as thereby to obstruct or prevent the carrying on, completing, or maintaining the navigation thereof, every such offender shall be guilty of felony, and being convicted thereof shall be imprisoned for any term not exceeding two years.

## BARRATRY.

A barrator, in legal acceptance, signifies a common mover, exciter, or maintainer of suits or quarrels, either in courts or in the country.—1 *Inst.* 368; 1 *Haw.* 243. *In courts*, means either courts of record, or not of record. *In the country*, in three manners: 1. In disturbance of the peace. 2. In taking or keeping possession of lands in controversy. 3. By false inventions and sowing of calumnious rumors and reports, whereby discord and disquiet may arise between neighbors.—1 *Inst.* 368. No one can be a barrator in respect to one act only.—1 *Haw.* 243. Neither is an attorney guilty of an act of barratry in respect of his maintaining another in a groundless action, to the commencing whereof he was no way privy.—1 *Haw.* 243. Nor shall a man be adjudged a barrator in respect of any number of false actions brought by him in his own right; for in such case he is liable to double costs.—1 *Haw.* 243.

By statute 34 Edw. III. c. 1, justices of the peace shall have power to restrain all barrators, and to pursue, arrest, take and chastise them, according to their trespass or offence.

As to the kind and manner of punishment it is said, that if the offender be a common person, he shall be fined and imprisoned and bound to his good behavior; and if he be of any profession relating to the law, he ought also to be further punished by being disabled to practise for the future.—1 *Haw.* 244.

## BASTARD.

\* By statute 2 Wm. IV. c. 1, after reciting that doubts had been entertained respecting the true meaning of 21 James I. entitled, "An act to prevent the destroying and murdering of bastard children," and the same had been found difficult and inconvenient to be put in practice, it is enacted that the said act should not be in force in this province. § 2. That after the passing of this act the trial of any woman charged with murder of any issue of her body, male or female, which, being born alive, would by law be bastard, shall proceed and be governed by the like rules of evidence and presumption as in other trials for murder.

See *post* title, "Concealing Birth."

## BAWDY-HOUSE.

Keeping a bawdy-house is a common nuisance, as it not only endangers the public peace, by drawing together dissolute and debauched persons, but also tends to corrupt the morals of both sexes, by such an open profession of lewdness.—3 *Inst.* 204; 1 *Haw.* c. 74, 75, § 6. This offence is punishable by fine and imprisonment.—1 *Haw.* c. 74.

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A married woman may be indicted for this offence, the same as if she were a *femme sole*; and may also be convicted of it together with her husband.—*Rex v. Williams*, 1 Salk. 383. And a man may be bound to his good behaviour for haunting bawdy-houses with women of bad fame, or for keeping bad women in his own house.—1 Haw. c. 74. And a constable is authorised by the common law to arrest persons that resort to bawdy-houses.—1 Haw. c. 10, § 34.

**Information and Complaint against a person for keeping a Bawdy-house.**

County of —, } The information and complaint of A. B., of  
to wit. } the township of —, in the said county,  
gentleman, taken upon oath, this — day of — 18 —, before  
me, C. D., Esq., one of her Majesty's justices of the peace, &c.  
The said informant upon his oath saith, that E. F., of —, and  
A. M., his wife, are the keepers of a common bawdy-house, at  
— in the said township, and that men and women of ill-fame  
are in the constant habit of resorting to the said house, at all  
hours of the night, and that the said house hath become and  
still remains a common nuisance.

Sworn, &c.

**Warrant to apprehend the Keeper of a Bawdy-house.**

County of —, } To the Constable of —,  
to wit. }

Whereas information and complaint hath this day been made upon oath, by A. B., of —, before me, C. D., Esquire, one of her Majesty's justices of the peace for the said county, that E. F., of —, and G. H., his wife, keep and maintain a house of ill-fame and a common bawdy-house, at —, and that lewd women frequently resort thither, with men of dissolute lives, to the great scandal of the neighbourhood, the encouragement of vice and debauchery, and against the Queen's peace: These are therefore, in her Majesty's name, to command you to bring the said E. F. and G. H. before me, at —, on the — day of —, at — o'clock, in the — noon, to answer to the complaint of the said A. B., and to be further dealt with according to law: Given under my hand and seal, &c.

**Condition of a Recognizance to appear and prosecute.**

The condition of this recognizance is such, that if the above bounden A. B. shall and do personally appear at the next general quarter sessions of the peace to be holden at the city of —, in and for the said county, and then and there prefer and give evidence upon a bill of indictment, before the grand jury, against E. F., of —, and G. H., his wife, for keeping a

common bawdy-house, and in case the said bill shall be found a true bill, then if the said A. B. shall prosecute the same with effect, and not depart the court without leave, this recognizance to be void, otherwise in full force.

*Condition of a Recognizance to appear and answer.*

The condition of this recognizance is such, that if the above bounden E. F., and G. H., his wife, shall personally appear at the next general quarter sessions of the peace to be holden at the city of —, in and for the said county, and then and there answer to a bill of indictment to be preferred against them for a nuisance, then this recognizance to be void, otherwise in full force.

*Commitment for want of Sureties.*

County of —, } To the Constable of —, and to the Keeper  
to wit. } of Her Majesty's gaol in and for the  
county of —.

Whereas information, &c. (as in the warrant) and the said E. F. and G. H. not being able to give sufficient security for their appearance at the next general quarter sessions of the peace, to be holden in and for the said county, to answer to a bill of indictment, to be then preferred against them for the said offence: These are therefore in her Majesty's name to require and authorise you the said constable, to convey the said E. F. and G. H. to the said gaol, and to deliver them to the keeper thereof; and you, the said keeper, are hereby required to receive the said E. F. and G. H. into your custody, and them safely keep in your gaol until they shall give such security as aforesaid, or be otherwise discharged in due course of law. Given under my hand and seal, &c.

*Indictment for keeping a Bawdy-house. (Archbold.)*

County of —, } The jurors, &c. That I. S., late of, &c. lab-  
to wit. } ourer, and A. his wife, on the — day of  
—, in the — year of the reign of our sovereign lady Vic-  
toria, and on divers other days and times, between that day  
and the day of the taking of this inquisition, with force and  
arms, at the township aforesaid, in the county aforesaid,  
unlawfully did keep and maintain a certain common ill-  
governed and disorderly house, and in the said house, for  
the lucre and gain of him the said I. S. certain persons, as  
well men as women, of evil name and fame, and of dishonest  
conversation, then and on the said other days and times, there  
unlawfully and willingly did cause and procure to frequent  
and come together, and the said men and women, in the said  
house of him the said I. S., at unlawful times, as well in the

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night as in the day, then and on the said other days and times, there to be and remain drinking, tippling, whoring and misbehaving themselves, unlawfully and wilfully did permit, and yet do permit, to the great damage and common nuisance of all the liege subjects of our said lady the Queen there inhabiting, being, residing and passing, to the evil example of all others in the like case offending, and against the peace of our lady the Queen, her crown and dignity.

## BEEF AND PORK.

By the 4 & 5 Vic. c. 88, (reserved act) reciting that it was expedient that the regulations in force in Lower Canada and Upper Canada, with regard to the curing, packing, and inspection of beef and pork, should be consolidated,—that one uniform law should be enacted for the whole province of Canada, and that the inspection of the articles aforesaid intended for exportation should *cease to be compulsory*, but should be *optional* to the parties interested: enacted § 1, that the L. C. act 44 Geo. III. c. 9, ord. 2 Vic. c. 15; U. C. act \*45 Geo. III. c. 8, and \*3 Vic. c. 25, shall be repealed. § 2. After the passing of this act the board of trade in Quebec, Montreal, Toronto and Kingston, and municipal authorities in other places where inspectors may be required, may appoint a board of examiners, to consist in Quebec and Montreal of *five*, and in other places of *three* fit and proper persons, residents, who before acting shall take and subscribe the following oath before any justice of the district:

"I, A. B., do swear that I will not, directly or indirectly, personally, or by means of any person or persons in my behalf, receive any fee, reward or gratuity whatever, by reason of any function of my office of examiner, and that I will therein well and truly in all things act without partiality, favour or affection, and to the best of my knowledge and understanding. So help me God."

§ 3. The mayor of Quebec, Montreal, Toronto, and Kingston, and the warden or chief municipal officer of other places, shall appoint by an instrument under his hand and seal of the corporation, an inspector of beef and pork for such places, such inspector to be previously examined by the board of examiners and recommended by the majority, and before acting shall furnish two good and sufficient sureties in 500*l.* if appointed for Quebec or Montreal, and 250*l.* for other places, to be approved by the mayor, warden, or chief municipal authority, by bond to her Majesty, and no inspector shall allow any person to act for him except his sworn assistants. § 4. Bond to be kept at the office of the clerk of the corporation. § 5. Board

## Beef and Pork.

of examiners before examination of any such inspector to require the attendance of two or more persons of the greatest experience and practice in the packing, curing and inspection of beef and pork, who may question the party touching his knowledge of the matter. § 6. Inspector to take the following oath before the mayor, warden, or chief municipal officer of the place:

I, A. B., do solemnly swear, that I will faithfully, truly and impartially, to the best of my judgment, skill and understanding, do and perform the office of an inspector of beef and pork, according to the true intent and meaning of an act of the Legislature of this province, intituled "*An act to regulate the inspection of beef and pork*;" and that I will not, directly or indirectly, by myself or by any other person or persons whomsoever, trade or deal in beef or pork of any description, otherwise than for the use and consumption of my own family, during the time I shall continue such inspector; and that I will not, directly or indirectly, brand or suffer to be branded any cask or half cask of beef or pork, but such as shall be sound and good and of the quality designated by such brand, and with regard to which all the other requirements of the said act shall have been complied with, to the best of my knowledge. So help me God.

§ 7. The present inspectors to be re-appointed without examination. § 8. The inspector for Quebec and Montreal to appoint one or more assistants when required by the board of trade, subject to the approval of the board of examiners, for whose acts the inspector shall be responsible; each assistant to furnish two sureties in 250*l.* and take and subscribe the following oath:

I, A. B., do swear that I will diligently, faithfully and impartially execute the office of Assistant to the Inspector of Beef and Pork for —, according to the true intent and meaning of an act of the legislature of this province, intituled "*An act to regulate the inspection of Beef and Pork*;" and that I will not directly or indirectly, personally or by means of any person or persons in my behalf, receive any fee, reward or gratuity whatever, by reason of my office of assistant to the said inspector (except my salary from the said inspector), and that I will not, directly nor indirectly, trade in the articles of beef or pork, or be in any manner concerned in the purchase or sale of beef and pork, except so far as may be necessary for myself and family. So help me God.

§ 9. To be paid and hold office at the pleasure of the inspector. § 10. Inspectors and assistants are required to cut up, salt, pack, cure, or if already packed, to unpack and examine



throughout, adding salt if necessary, and cooping up the same according to this act, each and every barrel or half barrel, tierce or half tierce, of beef and pork submitted to their inspection, such inspection to be made at the store, shop, or warehouse of such inspector (to be kept in a convenient situation), or at some store within the limits of the city, &c. for which he may be appointed, at the option of the proprietor. § 11. Inspectors and assistants to have iron or metal brands, and immediately after inspection to brand on each barrel, tierce or half tierce the words "Quebec," "Montreal," "Toronto," or "Kingston," or the name of the place (as the case may be), and the initial of the christian name and the surname at full length of the inspector, with the quality thereof, and if found to be soft or still fed shall be branded with the word "soft," and if unsound and unmerchantable with the word "rejected," and the month and year in which it was inspected, with the net weight and quality so packed and examined, and to receive for such inspection *one shilling* for each barrel, *7½d.* for a half barrel, *one shilling and six-pence* for each tierce, and *eleven-pence* for a half tierce, exclusive of cooperage and repairs not exceeding *six-pence* per barrel or half barrel, tierce or half tierce, delivered in good shipping order: such fee or allowance to be paid by the owner or consignee before removal: after inspection a certificate or bill of inspection shall be furnished by the inspector or assistant, without charge, specifying the quantity and the owner's marks, and the quantities and qualities ascertained by inspection, and the charges thereof: any inspector or assistant giving an untrue certificate, or without a personal examination, shall incur a penalty of 20*l.* currency, and be dismissed from office: beef or pork re-inspected, to bear the brand of the year and month originally affixed—such brand-marks to be branded on one head of the barrel or tierce, &c. Where beef or pork shall be sold subject to inspection, the cost shall fall on the vendor (if not the applicant), unless agreement to the contrary at the time of sale. *Provided also*, that any such agreement shall imply a warranty that this act has been complied with, as well with regard to the provisions, as to the vessels containing the same, and the marks thereon. § 12. All brands to be large and legible, within a space not exceeding *fourteen inches* long by *eight inches* broad, under a penalty of 20*l.* currency for each barrel, &c. § 13. Inspector not to charge storage unless left in store more than three days after notice of inspection. § 14. Any inspector suffering beef or pork left in his charge to be exposed, after inspection, to the heat of the sun, or inclemency of the weather, longer than *six* days, shall be liable to the penalty of 10*l.* currency for every offence; and

for not providing a suitable store in a convenient situation, *twenty shillings* a day. § 15. Barrels and salt, &c. to be furnished by the inspector, or owner, at the option of such owner or consignee. § 16. In case of dispute between the inspector and owner, with regard to the quality and condition, either party may apply to a justice, who shall summon *three* persons of skill and integrity, one to be named by the inspector and one by the proprietor, and the third by the justice, who shall examine and report their opinion under oath (to be administered by such justice), and the decision of the majority shall be final, and the inspector brand accordingly, and if the opinion of the inspector be confirmed, the costs shall be paid by the proprietor, *otherwise* by the inspector. § 17. Any inspector or assistant neglecting or refusing, when called upon by any proprietor between *sunrise* and *sunset* (not being previously engaged), within *two hours* to proceed to such inspection, shall forfeit to the person applying, on conviction before any one justice, the sum of *5l.* currency over and above all other damages. § 18. On the head of any barrel, &c. containing any thin, rusty, measley, tainted, sour, or unmerchable pork, or unmerchable or spoiled beef branded "*rejected*," the true character both as to quality and condition of such pork or beef shall be marked with black paint, and the inspector shall certify, when required, the quality, state and condition thereof, and the package containing the same, specifying the extent of damage and apparent cause thereof, with the brands or other marks upon the casks or packages, and the name of the owner. § 19. Barrels, &c. to be made of good seasoned white oak staves; and heads not less than  $\frac{3}{4}$  inch thick; each stave on the edge at the bilge not less than  $\frac{1}{2}$  an inch thick for barrels, nor less than  $\frac{3}{4}$  for tierces, and half barrels or tierces in the same proportion to their size, and in both cases free from defect; each barrel, &c. to be hooped and covered  $\frac{3}{4}$  of the length with good oak, ash, or hickory hoops, leaving  $\frac{1}{4}$  in the centre uncovered; and each barrel, &c. shall be bored in the centre of the bilge with a bit of not less in diameter than *one inch*, for the reception of pickle, each barrel to be not less than 27 inches nor more than 28 $\frac{1}{2}$  inches long; and the contents of each beef barrel shall not be less than 28 gallons nor more than 29 gallons wine measure, and of each pork barrel not less than 30 gallons nor exceeding 31 gallons wine measure; each tierce not less than 30 inches nor more than 31 inches long: contents for beef, not less than 44 gallons nor more than 45 gallons wine measure; for pork, not less than 45 gallons nor more than 46 gallons wine measure: half barrels or tierces to contain half the quantity, and no more. Inspectors to ascertain

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the sufficiency of each barrel, &c. before branding, and to brand none without. § 20. The salt to be used shall be clean, *St. Ubes, Isle of May, Turk's Island*, or other coarse ground salt of equal quality; and every barrel of fresh beef or pork shall be well salted with 75 pounds, and every tierce with 112 pounds of good salt as aforesaid, exclusive of a sufficient quantity of pickle as strong as salt will make it, and to each barrel of beef and pork shall be added four ounces, and to each tierce six ounces of saltpetre; and each half barrel of fresh beef and pork shall be salted with half the quantity of salt and saltpetre above mentioned, with a sufficiency of pickle, and in all cases of packing and re-packing beef and pork to be inspected and branded under the authority of this act, the inspector is hereby authorised to use salt, saltpetre, and pickle, in his discretion. § 21. All beef which an inspector shall find on examination to have been killed at a proper age, and to be fat and merchantable, shall be cut into pieces as nearly square as may be, not more than eight nor less than four pounds weight; and shall be sorted and divided for packing and re-packing in barrels and half barrels, tierces and half tierces, into four different sorts, to be denominated respectively *Mess—Prime Mess—Prime—and Cargo Beef*.

*Mess beef* shall consist of the choicest pieces only, that is to say, briskets, the thick of the flank, ribs, rumps, and sirloins of oxen, cows or steers, well fattened; and each barrel or half barrel, tierce or half tierce, containing beef of this description, shall be branded on one of the heads with the words *Mess Beef*.

*Prime mess beef* shall consist of pieces of meat of the second class, from good fat cattle, without shanks or necks; and barrels and half barrels, tierces and half tierces, containing beef of this description, shall be branded on one of the heads thereof with the words *Prime Mess Beef*.

*Prime beef* shall consist of choice pieces of fat cattle, amongst which there shall not be more than the coarse pieces of one side of a carcass, the houghs and neck being cut off above the first joint; and barrels and half barrels, tierces and half tierces, containing beef of this description, shall be branded on one of the heads with the words *Prime Beef*.

*Cargo beef* shall consist of the meat of fat cattle, of all descriptions, of three years old and upwards, with not more than half a neck and three shanks, (with the houghs cut off above the first joint), and the meat otherwise merchantable; and barrels and half barrels, and tierces and half tierces, containing such beef, shall be branded on one of the heads *Cargo Beef*.

And each barrel, in which beef of either of the foregoing

descriptions shall be packed or repacked, shall contain two hundred pounds of beef, and each half barrel, one hundred pounds; each tierce, three hundred pounds, and each half tierce, one hundred and fifty pounds. § 22. All pork which an inspector shall find to be fat and merchantable, shall be cut in pieces as nearly square as may be, and not exceeding six, nor less than four pounds weight, and shall be sorted and divided into four sorts, to be denominated respectively *Mess—Prime Mess—Prime—and Cargo Pork*.

*Mess pork* shall consist of the rib pieces only, of good hogs, not weighing less than two hundred pounds each; and barrels and half barrels, tierces and half tierces, containing such pork, shall be branded on one of the heads *Mess Pork*.

*Prime mess pork* shall consist of the pieces of good fat hogs, not weighing less than one hundred and ninety pounds each, the barrel to contain the coarse pieces of one hog only—that is to say, two half heads (not exceeding together sixteen pounds in weight) with two shoulders and two hams, and the remaining pieces of a hog; the tierce to contain the relative proportion of heads, shoulders and hams, and the remaining pieces of one hog and a half hog; and barrels and half barrels, tierces and half tierces, containing pork of this description, shall be branded on one of the heads *Prime Mess Pork*.

*Prime pork* shall consist of the pieces of good fat hogs, not weighing less than one hundred and fifty pounds each, the barrel to contain the coarse pieces of one hog and a half only, that is to say, three half heads, (not exceeding together twenty-four pounds in weight) three hams and three shoulders, and the remaining pieces of a hog and a half hog; the tierce to contain the relative proportions of heads, shoulders and hams, and the remaining pieces of two hogs and a quarter of a hog; and each barrel or half barrel, tierce or half tierce, containing pork of this description, shall be branded on one of the heads *Prime Pork*.

*Cargo pork* shall consist of the pieces of fat hogs, weighing not less than one hundred pounds each, the barrel to contain the coarse pieces of not more than two hogs, that is to say, four half heads, (not exceeding together in weight thirty pounds), four shoulders and four hams, and the remaining pieces of two hogs, and shall be otherwise merchantable pork; the tierce to contain the relative proportion of heads, shoulders and hams, and the remaining pieces of three hogs; and the barrels and half barrels, tierces and half tierces, containing pork of this description, shall be branded on one of the heads *Cargo Pork*; but in all cases, the following parts shall be cut off and not packed, viz., the ears close to the head, the snout

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above the tusks, the legs above the knee joint, the tail shall be cut off, and the brains, tongue and bloody grizzle taken out; and each barrel, in which pork of any of the foregoing descriptions may be packed or repacked, shall contain two hundred pounds, and each tierce three hundred pounds; and each half barrel, or half tierce, one-half those quantities respectively, of the several kinds and qualities of pork as aforesaid, and shall be branded accordingly. § 23. No inspector or assistant inspector of beef and pork shall directly or indirectly trade or deal in beef or pork, or be concerned in such trade, whether by buying, bartering, or exchanging any live or dead cattle or hogs, with a view to pack the same or get them packed, or by buying, bartering or exchanging beef or pork when packed; nor shall he purchase beef or pork of any description, otherwise than for the use and consumption of his family, under a penalty of 50*l.* currency for each offence, and on pain of being removed from office. § 24. If any packer or any other person shall, with a fraudulent intent, efface or obliterate any of the inspector's brand marks, or shall counterfeit any such marks or brand the same on any barrel or half barrel, tierce or half tierce, or shall empty or partially empty any barrel or half barrel, tierce or half tierce, branded after inspection, in order to put into the same other beef or pork, or shall use, for the purpose of packing any beef or pork, old barrels or half barrels, tierces or half tierces, without destroying the old brand marks, before offering the same for sale or exportation, or not being an inspector or assistant inspector, shall brand any pork or beef with the inspector's brand-marks, such person so offending shall for every such offence incur a penalty of 50*l.* currency, and every inspector or assistant inspector, who shall inspect or brand any beef or pork out of the limits for which he shall be appointed, or shall hire out his brands to any person whomsoever, or shall connive at or be privy to any fraudulent evasion of inspection of beef and pork by others, shall for every such offence incur a penalty of 50*l.* currency. § 25. Nothing herein contained shall be construed to prevent any person from packing for exportation, or from exporting any beef or pork, without inspection, provided such beef or pork be packed in tierces or half tierces, barrels or half barrels, of the dimensions herein before prescribed for such vessels respectively, and be marked with black paint, or branded on one end thereof, with the name and address of the packer, the date and place of packing, the weight, and the quality of the provisions contained in each package; nor shall anything herein contained prevent any person from packing for exportation, or from exporting, without inspection, any rounds of beef, rounds and briskets of beef,

**Beef and Pork.**

the meat of young pigs, called pig pork, the tongues of neat cattle, the tongues of pigs, hams of pigs, or pigs' cheeks, or any smoked or dried meat of any description, contained in tubs, casks or barrels, or other packages of any kind, provided each package be marked in the manner above mentioned; but every person who shall export any meat of the kind last mentioned, not so marked as aforesaid, or beef or pork of any other kind, not so marked, or not packed in barrels or half barrels, tierces or half tierces, of the dimensions hereinbefore prescribed, shall thereby incur a penalty of *twenty shillings* currency for every barrel or half barrel, tierce or half tierce, tub, cask or other package, with regard to which the provisions of this section shall be contravened, and such penalty shall be recovered and applied in the manner provided in regard to the other penalties imposed by this act. § 26. All fines, penalties and forfeitures, imposed by this act, not exceeding *10l. sterling*, shall be recoverable with costs in a summary way, before any two justices of the peace of the district, and may, in default of payment, be levied by warrant of distress, to be issued by such justices, against the goods and chattels of the offender; and when the same shall exceed the sum of *10l. sterling*, they shall be sued for and recovered by civil action, before any court of competent jurisdiction, and levied by execution, as in the case of debt, and one moiety of such fines and forfeitures (except such as hereinbefore directed to be otherwise applied) shall be immediately paid into the hands of the treasurer of the city of Toronto, or place wherein the suit shall have been brought, and shall remain at the disposal of the corporation for the public uses thereof, and the other moiety shall belong to the prosecutor, unless the action be brought by any officer of such corporation, in which case the whole shall belong to the corporation for the uses aforesaid. § 27. Actions to be commenced within six calendar months. § 28. Act to be in force from the 1st January, 1842. § 29. And to continue in force till the 1st January, 1848, and the end of the next session.

By 13 & 14 V., c. 30, it is enacted that none but inspectors or their assistants duly appointed, or actual owners, shall inspect any beef or pork, or brand or mark any barrel or half barrel, tierce or half tierce, or cask, or vessel of any kind containing the same, under a penalty of *10l.*, to be recovered and applied as provided by 4 & 5 Vic., c. 88: and if any owner shall brand any such vessel without affixing to it his name and the initial of his christian name, the date when branded, and the word "owner" or "owners," he shall incur the penalty aforesaid. § 2. Notwithstanding § 11 of said act, it shall be lawful to brand on the vessel containing any beef and pork "re-inspected," the date thereof, and other particulars required in case



of inspection—but no former inspection brand to be effaced ; every re-inspection made contrary to this section liable to the penalty aforesaid. § 3. Notwithstanding § 13 of former act, inspector not to charge storage on beef or pork inspected by him, unless left in his store more than *ten* days after notice by him of inspection to the proprietor or consignee. § 4. The Act 4 & 5 Vic. c. 88, as amended, made permanent.

## BENCH WARRANT.

\* By 55 G. III. c. 2, § 3, the process upon every indictment to bring the person indicted into court, shall be a *capias*, in the usual form, issued from the court before whom the said indictment shall be found, directed to the sheriff of the district wherein the said court shall be then sitting, commanding him to take the person so indicted and bring him before the said court, and if the person cannot be taken during the sitting of the said court, that then so soon after as he shall be taken he do bring or cause him to be brought before some justice of the peace of the said district, to be dealt with according to law ; which said *capias* shall be made returnable in the Court of King's Bench on the first day of the term next after the sitting of the said court before which the said indictment shall have been found. And if upon the return of the said writ the sheriff of the said district shall return that the person therein named is not to be found in his district then an *alias* writ of *capias* shall issue from the Court of King's Bench, under the seal of the said court, tested of the first day of term if in term time, or on the last day of the preceding term if in vacation, returnable before the said Court of King's Bench on the first day of the term next ensuing. § 4. And if to the said writ of *alias capias* the sheriff shall return *non est inventus*, then upon motion in court, or before a judge in vacation, a writ of exigent shall issue. For further proceedings see *post* title "Outlawry."

The above act was allowed to expire, but was revived and continued by the \*3 W. IV., c. 6, (passed in February 1833) for six years, and to the end of the next session. And by \*2 V., c. 7, was made perpetual.

After an indictment found, any private person, without a warrant, may arrest the offender.—*Dalt. c. 170, § 5.*

Upon the party being taken, (if the charge be *misdemeanor* only) he may give recognizance to appear to any magistrate, who thereupon will grant a *supersedeas* of the warrant. But if the charge be *felony*, magistrates should be exceedingly cautious in taking bail after an indictment found by the grand jury ; and the better course would perhaps be, to leave the prisoner to apply to a judge, who will bail him or not, according to his discretion.

**Benefit of Clergy.***Form of a Bench Warrant.*

County of York, } To the Sheriff of the County of York, Greeting :  
to wit.

These are to will an you, and in her Majesty's name to command you, upon sight hereof, to bring before us, J. C. and S. P., Esquires, two of her Majesty's justices of the peace for the county of York, at the general quarter sessions, of the peace now being holden at the city of Toronto, in and for the said county of York, or such other two or more of her Majesty's justices of the peace for the said county of York as shall be then and there sitting, the body of A. B., who stands indicted before us at this same sessions for an assault, (or for larceny) if the court shall be then and there sitting; and if he cannot be taken during the present sessions, that then so soon after as he shall be taken you bring or cause him to be brought before some justice of the peace of the said county, to be dealt with according to law; and what you shall have done herein make appear to her Majesty's justices of the Court of Queen's Bench at Toronto, on the first day of — term now next ensuing, and have you there this warrant. Dated in open sessions, at the city of Toronto aforesaid, this — day of —, in the year of our Lord 18—.

J. C.  
S. P.

*Form of Commitment, if for Felony.*

County of York, } To the Keeper of the Common Gaol at Toronto, in  
to wit. } the County of York:

Receive into your custody the body of A. B., herewith sent you, brought before me, G. H., Esquire, one of her Majesty's justices of the peace in and for the said county, by G. B., constable of the said county, by virtue of a bench warrant issued at the general quarter sessions of the peace, holden at Toronto aforesaid, in and for the said county, on the — day of — last, against the said A. B., upon a bill of indictment then and there found against the said A. B., for larceny, and him safely keep in your custody until he shall be discharged in due course of law. Given under my hand and seal, this — day of —, in the year of our Lord 18—.

**BENEFIT OF CLERGY.**

Benefit of Clergy was a privilege allowed by the law to clerks in orders, and afterwards to those among the laity who could read, by virtue of which a criminal, though duly convicted, was discharged from the sentence of the law in the king's courts and delivered over to the ordinary, to be dealt with according to the ecclesiastical canons.—4 Bl. Com. 368. Owing to the ancient severity of the British law, which subjected all persons convicted of felony, of any description, to the penalty of death, the benefit of clergy appears to have been a remedy invented by the church in her day of power to rescue offenders convicted of felony from the punishment consequent

thereon; subsequently the legislature, to distinguish such crimes as were by statute to be punished with death, usually enacted that the offender, upon conviction, should be deemed guilty of felony without benefit of clergy, thus leaving the criminal to rely only upon the royal prerogative for a mitigation of his punishment. The real distinction therefore, in cases of felony, appears to have been this: Felonies at the common law or by statute, within the benefit of clergy, were no longer deemed capital; but such as were not within this privilege partook of all the ancient rigour of the law, and were deemed capital or punishable with death. Benefit of clergy is now very properly abolished and a milder criminal code substituted: this important change was effected in England by statute 7 & 8 G. IV. c. 27, and in Upper Canada by statute \*3 W. IV. c. 5.

And by the 4 & 5 Vic. c. 24, § 19, benefit of clergy is abolished throughout the United Provinces.

### BIGAMY.

Bigamy signifies, in criminal law, the offence of having two wives or two husbands at the same time.—4 *Bl. Com.* 163.

By 4 & 5 Vic., c. 27, § 22, if any person, being married, shall marry any other person during the life of the former husband or wife, whether the second marriage shall have taken place in this province or elsewhere, every such offender, and every person counselling, aiding or abetting such offender, shall be guilty of felony, and being convicted thereof, shall be liable to be imprisoned at hard labour in the provincial penitentiary for any term not less than seven years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years, and any such offence may be dealt with, enquired of, tried, determined and punished in the district or county where the offender shall be apprehended or be in custody, as if the offence had been actually committed in that district or county: Provided always, that nothing herein contained shall extend to any second marriage contracted out of this province by any other than a subject of her Majesty resident in this province, and leaving the same with intent to commit the offence, or to any person marrying a second time, whose husband or wife shall have been continually absent from such person for the space of seven years then last past, and shall not have been known by such person to be living within that time; or shall extend to any person who, at the time of such second marriage, shall have been divorced from the bond of the first marriage, or to any person whose former marriage shall have been declared void by the sentence of any court of competent jurisdiction.

## 108 Billiard Tables—Blasphemy, &c.

### *Warrant of Commitment for Bigamy.*

County of York, } To the gaoler or keeper of the gaol of the County  
to wit. } of York.

Receive into your custody in the said gaol, and there safely keep until he shall be discharged by due course of law, the body of A. B., herewith sent you, and charged before me J. C., Esq., one of her Majesty's justices of the peace in and for the said county, on the oaths of C. D. and E. F., and others, for that he the said A. B., on the — day of —, in the year of our Lord 18—, at —, did marry one G. H., spinster, and her the said G. H. then and there had for his wife; and that the said A. B. afterwards, to wit, on the — day of —, in the year aforesaid, at —, feloniously did marry and take to wife one L. S., spinster, the said G. H. his former wife being then living, against the form of the statute in such case made and provided, (the said C. D. having also made oath before me the said justice, that the said A. B. was apprehended and taken for the said felony, at —, in the said county). Given under my hand and seal, this — day of —, in the year of our Lord 18—.

### BILLIARD TABLES.

By statute \*50 G. III. c. 6, a duty of £40 is imposed upon every person keeping any billiard table for hire or gain. § 2. And no person shall have in his possession any billiard table for hire or gain without a license from the inspector, under the penalty of £100, to be recovered by action of debt, bill, plaint, or information in his Majesty's Court of King's Bench.

\*By 3 Vic. c. 20, § 10, every keeper of an inn, ale-house, ordinary or recess, and all other persons who shall keep a house of entertainment, resort or boarding, who shall have and keep a billiard table in such house, out-house or room, or building connected with or attached thereto, shall be subject as by the \*50 G. III. c. 6, is directed.

### BLASPHEMY AND PROFANENESS.

All blasphemies against God, as denying His Being or providence, and all contumelious reproaches of Jesus Christ, all profane scoffing at the holy scriptures, or exposing any part of them to contempt or ridicule, impostures in religion, as falsely pretending to extraordinary commissions from God, and terrifying or abusing the people with false denunciations of judgment, and all open lewdness grossly scandalous, are punishable by fine and imprisonment, and also such corporal punishment as to the court shall seem meet, according to the heinousness of the crime.—1 *Haw.* 6, 7.

And if any person shall, in any stage-play, interlude, show, may-game or pageant, jestingly or profanely speak or use the

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holy name of God, or of Christ Jesus, or of the Holy Ghost, or of the Trinity, he shall forfeit £10—half to the king and half to him that shall sue.—3 J. C. 21.

## BOARD OF WORKS.

See *post* title "Public Works."

## BOUNDARY LINES.

By 12 Vic. c. 35, reciting that it was expedient to amend and consolidate the laws respecting land surveyors, and the survey and admeasurement of lands, by § 1, former acts (a) are repealed.

§ 26. Stone monuments, or monuments of durable materials, to be placed at the several corners, governing points or offsets of every township surveyed or hereafter to be surveyed; and also at each end of the several concession lines of such townships; and lines drawn as hereinafter prescribed therefrom shall be the permanent boundary lines of such townships and concessions. § 27. Such monuments to be placed under the direction and order of the Commissioner of Crown Lands.

§ 28. That the courses and lengths of said boundary lines so ascertained and established, shall be the true courses and lengths of the boundary lines of said townships and concessions, whether the same do or not, on actual survey, coincide with the courses and lengths in any letters patent or other instrument. § 29. If any person shall knowingly and wilfully pull down, deface, alter or remove, any such monument so erected as aforesaid, he shall be guilty of felony; and if any person shall knowingly and wilfully deface, alter or remove any other land-mark, post or monument, placed by any land surveyor to mark any limit, boundary or angle of any township, concession, range, lot or parcel of land, such person shall be guilty of a misdemeanor, and being convicted before any competent court, shall be punished by fine or imprisonment, or both; fine not to exceed £25, nor imprisonment three months: but this clause not to prevent land surveyors, in their operations, from taking up posts or other boundary marks when necessary; after which they shall carefully replace them as before. § 30. Monuments not to be replaced, except on application of the municipal council of the district. § 31. It shall be lawful for the district council, on application of one-half of the resident landowners in any concession (or without such application if the council shall deem necessary), to make application to the governor to cause any such line to be surveyed and marked by permanent stone boundaries under the

(a) 88 G. 3, c. 1; 59 G. 3, c. 14; 2 V. c. 17; 4 & 5 V. c. 9.

direction and order of the Commissioner of Crown Lands, at the cost of the proprietors of the lands in such concession or part of a concession interested; and it shall be lawful for such district council to cause an estimate of the sum requisite to defray the expenses to be incurred to be laid before them, in order that the same may be levied on the said proprietors in proportion to the quantity of land held by them respectively in such concession or part of a concession, in the same manner as any sum required for any other purpose authorized by law may be levied; and the lines or parts of lines so surveyed and marked as aforesaid, shall thereafter be taken to be the permanent boundary lines of such concessions or parts of concessions to all intents and purposes; and all expenses incurred in performing any survey or placing any monument or boundary under this section, or of the next preceding section, shall be paid by the district treasurer to the person employed, on certificate of the Commissioner of Crown Lands: Provided that the lines shall be drawn so as to leave each of the adjacent concessions of a depth proportionate to that intended in the original survey. § 32. All boundary lines of townships, cities, towns, villages, concession lines, governing points, and all boundary lines of concessions, sections, blocks, gores, commons, and all side lines and limits of lots surveyed; and all posts or monuments which have been placed or planted at the front angles of any lots or parcels (provided the same have been or shall be marked, placed or planted, under the authority of the executive government of the late province of Upper Canada, or under the authority of the executive government of this province), shall be, and the same are hereby declared to be, the true and unalterable boundaries of the same, whether the same shall upon admeasurement be found to contain the exact width, or more or less, expressed in any letters patent, grant or other instrument in respect thereof; and such township, city, town, &c., shall embrace the whole width contained between the first posts, monuments or boundaries, planted or placed at the front angles of any such township, city, town, &c., so marked, placed or planted as aforesaid, and no more nor less. § 33. All allowances for roads or streets in any city, town or village, to be public highways. § 34. As to lands granted in blocks and subsequently surveyed by the grantees—such surveys to be deemed original surveys. § 35. The course of the boundary line of each and every concession, on that side from which the lots are numbered, shall be, and the same is hereby declared to be, the course of the division or side lines throughout the several townships; *provided* that such division or side lines were intended in the original

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survey to run parallel to the said boundary; and all surveyors are hereby required to run division or side lines, which they may be called upon to survey, so as to correspond with and be parallel to that boundary line of the concession in which such lands are situate, from whence the lots are numbered as aforesaid: *provided* always, that such division or side lines were intended in the original survey to run parallel to the said boundary: *provided* also, that when the end of a concession from which the lots are numbered is bounded by a lake or river, or other natural boundary, or where it has not been run in the original survey, performed under such competent authority as aforesaid, or when the course of the division or side lines of the lots therein was not intended in the original survey to run parallel to such boundary, the said division or side line shall run parallel to the boundary line at the other extremity of such concession, provided their course was intended in the original survey to be parallel thereto, and that such boundary line was run in the original survey: *provided* further, that when in the original survey the course of the division or side lines in any concession was not intended to be parallel to the boundary line at either end of such concession, they shall be run at such angle with the course of the boundary line at that end of the said concession from which the lots are numbered, as is stated in the plan and field notes of the original survey; provided such line was run in the original survey as aforesaid, or with the course of the boundary line at the other extremity of the said concession, if the boundary at that end of the concession from which the lots are numbered was not run in the original survey; or if neither of the aforesaid boundaries of the concession were run in the original survey, or if it be bounded at each end by a lake or river or other natural boundary, then at such angle, with the course of the line in front of the said concession, as is stated in the plan and field notes aforesaid: *provided*, nevertheless, that if any division or side line between lots, or proof line intended to be parallel to the division or side lines between lots, shall have been drawn in any such concession in the original survey thereof, the division or side lines between the lots therein shall be drawn parallel to such division or side line, or proof line; and when two or more such divisions or side lines, or proof lines, have been drawn in the original survey, that division or side line, or proof line nearest to the boundary of the concession from which the lots are numbered, shall govern the course of the division or side lines of all the lots in such concession, between the boundary of the concession from which the lots are numbered and the next division or side line, or proof line drawn in the original survey, which shall govern

the course of the division or side lines of all the lots up to the next division or side line, or proof line, drawn in the original survey, or to the boundary of the concession towards which the lots are numbered (as the case may be): *provided* further, that in all those townships which in the original survey have been divided into sections, pursuant to an order in council, dated 27th March 1829, the division or side lines in all concessions, in any section, shall be governed by the boundary line of such section, in like manner as the division or side lines in townships originally surveyed before that day are governed by the boundary lines of the concession in which such lots are situate. § 36. The front of each concession where only a single row of posts has been planted, and the lands have been described in whole lots, shall be that end or boundary of such concession which is nearest to the boundary of the township from which the concessions are numbered; *provided*, that in those townships bounded in front by a river or lake, where no posts were planted in the original survey to regulate the width in front of the lots in the broken front, the division or side lines of such lots shall be drawn from the posts or boundaries on the concession line in the rear, parallel to the governing line determined as aforesaid, to the river or lake in front; *provided* also, that when the line in front of any such concession has not been run in the original survey, the division or side lines of the lots in such concession shall be run from the original posts or monuments planted on the rear line thereof, parallel to the governing line determined as aforesaid, to the depth of the concession, viz: to the centre of the space contained between the lines in front of the adjacent concessions, if the concessions were intended in the original survey to be of an equal depth; or if they were not so intended, then to the proportionate depth intended in the original survey, having due respect to any allowance for road made in the original survey; and that a straight line joining the extremities of the division or side lines of any lot in such concession, drawn as aforesaid, shall be the true boundary line of that end of the lot, if it has not been run in the original survey. § 37. In townships in which the concessions have been surveyed with a broken front, that is with posts or monuments planted on both sides of the allowance for roads between the concessions, and the lands have been described in half lots, the division or side lines shall be drawn from the posts at both ends to the centre of the concession, and each end of such concession shall be the front of its respective half of such concession, and a straight line joining the extremities of the division or side lines of any half lot, in such concession drawn

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as aforesaid, shall be the true boundary of that end of the half lot which has not been bounded in the original survey. § 38. That in those townships where each alternate concession line only has been run in the original survey, but with double fronts, the division or side lines shall be drawn from the posts or monuments on each side of such alternate concession lines, to the depth of a concession, viz., to the centre of the space contained between such alternate concession lines, if the concessions were intended in the original survey to be of an equal depth, otherwise to the proportionate depth intended; and each alternate concession line as aforesaid, shall be the front of each of the two concessions abutting thereon. § 39. Every land surveyor running any side line between lots shall, if not done before, or if done, and the course cannot be ascertained, determine by astronomical observation, the true course of a straight line between the front and rear ends of the governing boundary line of the concession or section, and shall run such side line parallel thereto, if so intended in the original survey, or at such angle therewith as stated in the plan and field notes. § 40. In case an original post or monument cannot be found, the surveyor shall obtain the best evidence the case will admit of respecting such side line, post or limit; but if it cannot be satisfactorily ascertained, then the surveyor shall measure the true distance between the nearest undisputed posts, limits or monuments, and divide such distance into such number of lots as contained in the original survey, assigning to each a breadth proportionate to the original survey; and if any portion of the line in front of the concession or boundary of the township shall be obliterated or lost, then the surveyor shall run a straight line between the two nearest points when such line can be clearly ascertained, and shall plant such intermediate posts as he may be required in the line so ascertained, having due respect to allowances for road; and the limits of each lot so found shall be the true limits thereof. § 44. In cases where letters patent have issued for several lots, in concessions adjoining each other, the side lines shall commence at the front angles of such lots, and shall be run as hereinbefore provided, and shall not continue on in a straight line through several concessions, unless the side lines, when run as aforesaid, shall intersect the corresponding post or monument in the front of the concession next in rear; each lot being surveyed and bounded independently of all other lots mentioned in the grant. § 48. False swearing under this act to be deemed perjury. § 49. If any action of ejectment shall be brought against any person who, after any line or limit shall have been established according to this act, shall be found, in consequence of unskilful

survey, to have improved on lands not his own, the judge of assize shall direct the jury to assess such damages for the defendant for any loss he may sustain thereby, and to assess the value of the land; and if verdict be found for the plaintiff, no writ of possession shall issue, until such plaintiff shall have tendered or paid such damages, or shall have offered to release the land to the defendant, provided the defendant should pay or render to the plaintiff the value of the land so assessed, before the fourth day of the ensuing term. § 50. If upon the trial it shall appear, that defence made was only for the purpose of obtaining the value of improvements in consequence of unskilful survey, and the judge shall so certify, the defendant shall be entitled to his costs, provided that at the time of entering into the *consent rule* the defendant shall have given notice to the plaintiff that he only claimed the amount of his improvements, and did not intend to contest plaintiff's title; and in case such notice shall not be given, or the jury shall assess less than the amount claimed, the defendant shall pay costs to the plaintiff. § 51. Interpretation clause. § 52. A copy of this act to be sent to every land surveyor.

## BREAD.

\*By 6 G. IV. c. 6, entitled, "An Act for the better regulating the assize and fixing the price of bread in the several police towns throughout this province," it shall be lawful for such of her Majesty's justices of the peace residing within the limits of any town in this province where a police is established, or residing within the limits of the division constituted for the time being for holding a court of requests in said town or towns, to assemble on the first and third Saturday in each month, at the court house in each town, and two of the said justices then present may assize and fix the price of bread, and if more than two present, the majority shall fix the same for each ensuing intermediate period, or if no justices shall be present, or no change be found necessary, then the last assize made shall continue in force until varied or changed by a new assize. § 2. The clerk of the market is required to keep a just and fair statement in a book of the daily price or prices of flour in the market, and exhibit the same to any two justices, and make oath of the correctness, if required. § 3. The aforesaid statement of the average price of flour for the fourteen days previous shall be the guide for the said justices to assize and fix the price of bread for the ensuing fourteen days, with due regard to the existing price of flour, fuel and labour. § 4. Within twenty-four hours after such assize made, the clerk of the market shall affix a notice thereof in some conspicuous place on

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the market-house. § 5. Penalty of ten shillings upon every baker who shall not conform to such assize, to be recovered before any two justices, upon the oath of one or more witnesses, to be levied by distress and sale. § 6. Fines to be applied for police purposes.

See also Act of Incorporation City of Toronto, \*4 W. IV. c. 23; Act of Incorporation City of Kingston, \*1 Vic. c. 27; and the several Acts respecting Police in Towns, also the General Municipal Act, 12 Vic. c. 81.

### BRIBERY.

Bribery is the receiving of any undue reward by any person whatsoever, whose ordinary profession or business relates to the administration of public justice, or who is in any official situation, in order to influence his behaviour in office, and incline him to act contrary to the known rules of honesty and integrity, and the person who *gives* the bribe is as much guilty of the offence as he who takes it.—3 *Inst.* 149; 1 *Haw.* c. 67, § 2; 4 *Bl. Com.* 139.

The offence of bribery is punishable with *fine and imprisonment*.—1 *Haw.* c. 67, § 3.

In judges, especially the superior ones, says *Blackstone*, bribery hath always been looked upon as so heinous an offence, that the Chief Justice *Thorp* was hanged for it in the reign of Edward III.—4 *Bl. Com.* 140.

By a statute of 2 Hen. IV. all judges, officers and ministers of the king, convicted of bribery, shall forfeit treble the bribe, be punished at the king's will, and be discharged from the king's service for ever.—3 *Inst.* 146.

So a mere *attempt* to bribe a judge or a juryman is punishable by law in the party that offers it.—3 *Inst.* 147; *R. v. Young*, *cit.* 2 *East. Rep.* 14, 16.

Bribery at *elections for members of parliament* was always an offence at *common law*, and punishable by indictment or information.—*R. v. Pitt*, 3 *Burr*, 1335.

### BRIDGES.

By 4 & 5 Vic. c. 26, § 13, if any person shall unlawfully and maliciously pull down or in anywise destroy any public bridge, or do any injury with intent and so as thereby to render such bridge or any part thereof dangerous or impassable, every such offender shall be guilty of felony, and, being convicted thereof, shall be imprisoned for any term not exceeding four years.

By stat. 5 Vic. c. 44, if any person shall drive or ride at a faster rate than a walk over any public bridge exceeding thirty feet in length in Upper Canada, each and every person so of-

fending, upon proof of such offence before any justice of the peace for the district, either by confession of the party, or by the oath of one or more credible witness or witnesses, and on conviction thereof shall be liable to a fine of not less than 5s. nor more than 20s., to be paid forthwith, and in default thereof to be levied by distress and sale of the offender's goods and chattels, by warrant under the hand and seal of such justice; and in case of insufficiency of distress, or the offender not being resident in the district, it shall be lawful for such justice, by warrant under his hand and seal, to commit such offender to the common gaol of the district for a period not exceeding two days, unless penalty and costs sooner paid. § 2. Penalties to be paid to the treasurer for the use of the district. § 3. Notice of this act to be printed and put up at each end of the bridge in the form prescribed. § 4. Any person defacing such notice shall be liable to a fine of not less than 5s. nor more than 40s., recoverable as other fines imposed by this act.

See also the General Municipal Act, 12 Vic. c. 81.

### BUGGERY.

Buggery is a detestible and abominable sin, not to be named, committed by carnal knowledge against the ordinance of the Creator and order of nature, by mankind, or with brute beast, or by womankind with brute beast.—3 *Inst.* 58. And by stat. 25 H. VIII, c. 6, buggery committed with mankind or beast, is made felony; which said statute making it felony generally, there may be accessories before and after, but those that are present, aiding and abetting, are all principals; and although none of the principals are admitted to their clergy, yet accessories before and after are not excluded from clergy.—1 *H. H.* 670.

If the party buggered be within the age of discretion, (fourteen years) it is no felony in him, but in the agent only; but if buggery be committed upon a man of the age of discretion, it is felony in both of them.—3 *Inst.* 59; 1 *H. H.* 67.

By 4 & 5 Vic. c. 27, § 15, every person convicted of the abominable crime of buggery, either with mankind or with any animal, shall suffer death as a felon. § 18. The offence deemed completed by proof of penetration only.

By 6 Vic. c. 5, § 5, where any person shall be convicted of any assault with intent to commit the above offence, the court may sentence the offender to be imprisoned at hard labor in the Penitentiary for any term not exceeding three years, or to be imprisoned in any other prison or place not exceeding two years.



## BUILDINGS.

By statute 4 & 5 Vic. c. 25, § 36, if any person shall steal or rip, cut or break, with intent to steal, any glass or wood-work belonging to any building whatsoever, or any lead, iron, copper, brass or other metal, or any utensil or fixture, whether made of metal or other material, respectively fixed in or to any building whatsoever, or anything made of metal fixed in any land being private property, or for a fence to any dwelling-house, garden or area, or in any square, street or other place dedicated to public use or ornament, every such offender shall be guilty of felony, and, being convicted thereof, shall be liable to be punished in the same manner as in the case of simple larceny; and if fixed in any square, street or other like place, it shall not be necessary to allege the same to be the property of any person.

## BURGLARY.

Burglary is a felony at common law, in breaking and entering the mansion-house of another in the *night*, with intent to commit some felony within the same, whether the felonious intent be executed or not.

By statute 12 Ann. c. 7, if any person shall enter into the mansion-house of another by day or by night, without breaking the same, with an intent to commit felony, or being in such house shall commit any felony, and shall in the *night time* break the said house to get out, he shall be guilty of burglary.

And by 4 & 5 Vic. c. 25, § 14, whosoever shall burglariously break and enter into any dwelling-house, and shall assault with intent to murder any person being therein, or shall stab, cut, wound, beat or strike any such person, shall be guilty of felony, and being convicted thereof shall suffer death. § 16. And if any person shall enter the dwelling-house of another with intent to commit felony, or being in such dwelling-house shall commit any felony, and shall in either case break open of the said dwelling-house in the night time, he shall be deemed guilty of burglary.

Every entrance is not a breaking—as, if the door stand open, and the thief enter, this is no breaking; so, if the window be open, and the thief draw out some of the goods, this is not burglary, because there is no actual breaking; but if the thief break the glass of the window, and draw out the goods, this is burglary.—3 Inst. 64. And Lord Hale says these acts amount to an actual breaking—opening the casement, or breaking the glass window; picking open the lock of the door, or putting back the lock, or the leaf of a window, or unlatching the door that is only latched.—1 H. H. 552; and so does the pushing

open of folded doors—*Rex v. Brown*, 2 *East. P. C.* 487; 2 *Russ.* 902: pulling down the upper sash of a window—*Rex v. Haines*, *Russ. & Ry.* 451: *S. C. nom.*, *Rex v. Harrison*, 1 *Chetw. Brom.* 497: creeping down a chimney.—*Cromp.* 32; *Dalt.* 253; 1 *Haw. c.* 38, § 6.

The breaking is not confined to the outer door or external parts of a house, for if A. enters the house of B., the outward door being open, or by an open window, and when within the house turn the key of a chamber door, or unlatch it with intent to steal, this will be burglary—*Johnson's case*, 2 *East. P. C.* 488; and the like if any lodger in a house or guest in a public inn open and enter another person's chamber door, with intent to commit a felony—1 *Hale*, 553, 554; 4 *Bl. Com.* 227; *Rex v. Bington*, 2 *East. P. C.* 448; but if an inn-keeper break the chamber of his lodger or guest at night to rob, this would not be burglary, for a man cannot commit a burglary by breaking his own house.—2 *East. P. C.* 502; *Kel.* 84.

*Constructive breaking* is where, in consequence of violence commenced or threatened, the owner of the house (through fear or in order to repel the violence) opens the door, and the thief then enters, this amounts to burglary, for the opening of the door in this case is as much imputable to the thief as if it had been done by his own hands.—*Cromp.* 32, (a); 1 *Hale*, 553; 2 *East. P. C.* 486. And so, if in consequence of any fraud or deceit the owner is induced to open his door to the thieves, this will amount to breaking; as, where thieves came with a pretended hue and cry, and required a constable to go with them to apprehend the owner and search his house, and the owner, at the command of the constable, open the door, when the thieves bound the constable and robbed the house, this was held to be burglary.—1 *Hale*, 553; 3 *Inst.* 64; *Cromp.* 32, (b); 4 *Bl. Com.* 226. And the like if a man go to a house under pretence of being authorised to make a distress, and by this means obtain admittance.—*Gascoigne's case*, 1 *Leach*, 284. For in all these cases the law will not endure to have its justice defrauded by such evasions.—1 *Haw. c.* 38, § 5; 4 *Bl. Com.* 227.

#### What is an Entering.

It is deemed an entry when the thief breaketh the house and his body or any part thereof—as his foot or arm—is within any part of the house, or when he putteth a gun into a window which he hath broken, or into a hole of the house which he hath made, with intent to kill or murder—3 *Inst.* 64; or where the thief merely puts his fingers within the window—*Rex v. Davis*, *Russ. & Ry.* 499; but if he shoots without the window, and the bullet only comes in, the point is doubtful—

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1 *Hale*, 555; yet *Hawkins* says this is a sufficient entry.—1 *Haw. c.* 38, § 11. Where a glass window, which had shutters inside, was broken, and the window was opened with the hand, but the shutters were not broken or opened, this was ruled to be burglary—*Rex v. Roberts alias Chambers*, 1 *East. P. C.* 487; but, as in this case, *Holt, C. J.* and *Powell, J.* doubted, and inclined to another opinion, no judgment was given; but in a recent case the same point was before the judges, who were of opinion (three being absent) that the entry was sufficient.—*Rex v. Baily, Russ. & Ry.* 341.

If divers come in the night to do a burglary, and one of them break and enter, the rest of them standing to watch at a distance, this is burglary in all.—3 *Inst.* 64.

#### *What is a Mansion or Dwelling-house.*

Where the whole of the house is let out into lodgings, and the owner does not inhabit any part of it, though there is only one outer door common to all its inmates, yet every separate apartment is the distinct mansion-house of its possessor.—*Rex v. Trapshaw*, 1 *Leach*, 427. So where a loft over a coach-house and stables was converted into lodging-rooms.—*R. v. Turner*, 1 *Leach*, 305.

But where the owner of a dwelling-house lets off the shop to a tenant, who occupies it by means of a *different entrance* from that belonging to the dwelling-house, and carries on his business in it, but never sleeps there, it then becomes so severed from the rest of the house, as no longer to be a place where burglary can be committed; for it ceases to form parcel of the dwelling-house of the owner, being thus severed by lease as well as by the distinct mode of ingress and egress to it; and it does not become the dwelling-house of the tenant, when neither he nor any of his family sleep there.—1 *Hale*, 557; *Kel.* 83; 4 *Bl. Com.* 225; 2 *East P. C.* 507. But if the tenant, or his servant, should usually, or often, sleep in the shop at night, it would then become the dwelling-house of the tenant.—1 *Hale*, 558.

There is no severance, however, where there is *any internal communication*, though there may be a separate entrance from without to the part let off; as where the communication was formed by means of a trap-door and a ladder, which were seldom used, but the trap-door was never fastened. Lord Ellenborough said it could make no difference whether the communication was through a trap-door, or by a common stair-case.—*Rex v. Stockton*, 2 *Taunton*, 339; 2 *Leach*, 1015. And when the owner of the house continues to sleep in it, no part of it then can be so severed, by being let off to a tenant or a lod-

ger, as to become a separate mansion-house.—*Rex v. Rogers*, 1 *Leach*, 89; 2 *East. P. C.* 507. Unless, indeed, that which was one house originally comes to be divided completely into two separate tenements, and there is a distinct outer door to each, without any internal communication; in which case they will then become separate houses.—*Per Ld. M. Cowp.* 8. And now, by 4 & 5 V. c. 25, § 18, no building, although within the same curtilage with the dwelling-house and occupied therewith, shall be deemed to be part of such dwelling-house for the purpose of burglary, or for any of the purposes in said act, unless there shall be a communication between such building and dwelling-house, either immediate or by means of a covered and inclosed passage leading from the one to the other. § 19. If any person shall break and enter any building and steal therein any chattel, money or valuable security, such building being within the curtilage of a dwelling-house and occupied therewith, but not being part thereof, every such offender, being convicted thereof, shall be liable to be imprisoned at hard labor in the provincial penitentiary for any term not exceeding fourteen years nor less than seven years, or be imprisoned in any other prison or place of confinement not exceeding two years. § 20. If any person shall break and enter any shop, ware-house or counting-house, and steal therein any chattel, money or valuable security, every such offender being convicted thereof, shall be liable to any of the punishments which the court may award as hereinbefore last mentioned. But if the owner of a house neither *inhabits* it himself, nor any of his family, it will not then become *his* dwelling-house, as applicable to the offence of burglary. Therefore, when a man purchases or rents a house with intention to reside in it, and moves some of his furniture into it, but neither he nor any of his family ever sleep there, and it is broken open in the night, the judges have determined that a breaking into a house of this description does not amount to burglary.—*R. v. Lyons*, 1 *Leach*, 185; 2 *East. P. C.* 496; *R. v. Hallard*, 2 *East.* 498; 2 *Leach*, 701 (note a); *R. v. Thompson*, 2 *Leach*, 771; 2 *East.* 498; *Contra*, 1 *Haw. c.* 38, § 18; 1 *Kel.* 46. And this, even though the owner of the house has used it for his meals, and for all the purposes of his business.—*Rex v. Martin, Russ & Ry.* 108. Or, though a person actually sleep in the house for the purpose of protecting it, if such person forms no part of the domestic family of the owner,—as where the owner puts in a workman or other person, who is in no situation of servitude to him, for the purpose of taking care of his goods.—*Rex v. Fuller*, 2 *East. P. C.* 498; 1 *Leach*, 186 (note b); *Rex v. Harris*, 2 *Leach*, 701; 2 *East. P. C.* 498.

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So, if a servant is put into a warehouse to watch goods, this does not make it a dwelling-house.—*Rex v. Smith*, 2 East. P. C. 497.

But where the owner of the house has once inhabited it, it will not cease to be his dwelling-house on account of any occasional or temporary absence, provided he has the *animus revertendi*—the intention of returning to it; in such cases, the premises may be the subject of burglary.—*Rex v. Murray & Harris*, 2 East. P. C. 496. *cit. Fost.* 77. But where a person had a country-house, at which he lived only a part of the year, and then quitted, with a considerable part of his furniture, with no intention of immediately returning, and during his absence the house was broken open and rifled—this was held not to be burglary.—*Fost.* 76, 77.

#### *Of the time of committing the Offence.*

It must be *in the night*; and, by 4 & 5 Vic. c. 25, § 16, in cases of burglary, the night shall be considered to commence at *nine* in the evening and to conclude at *six* the next morning. It being moonlight will make no difference, for then many midnight burglaries would go unpunished; and the malignity of the offence, as Blackstone observes, does not indeed so properly arise from its being done in the dark, as at the dead of night, when all the creation, except beasts of prey, are at rest; when sleep has disarmed the owner, and rendered his castle defenceless.—4 *Bl. Com.* 224.

The breaking and entering need not be the *same night*; for if thieves break a hole in the house one night, with the intent to enter another night and commit a felony, and they accordingly do so, through the hole they made the night before—this seems to be burglary.—1 *Hale*, 551; 4 *Bl. Com.* 226.

#### *Of the Intent.*

The *intent* of the breaking and entering must be to commit a *felony*. Therefore, if the intention was only to commit a *trespass*, the offence will not be a burglary. Thus, an intention to *beat* a man in the house, will not be sufficient; for though killing or murder may be the consequence of beating, yet if the primary intention were not to kill, a breaking and entering, for the purpose of beating, will not amount to burglary.—1 *Hale*, 551; 2 *East. P. C.* 509. And where a man broke into a house with intent to commit a rape, this was held to be burglary.—*Rex v. Gray*, 1 *Str.* 481.

By stat. 23 G. III. c. 88, it is enacted, that if any person shall be apprehended having upon him any picklock, key, crow, jack-bit, or other implement, with an intent feloniously to break and enter into any dwelling-house, out-house, &c.; or shall

have upon him any pistol, hanger, cutlass, bludgeon, or other offensive weapon, with intent feloniously to assault any person; or shall be found in or upon any dwelling-house, ware-house, coach-house, stable or out-house, or in any inclosed yard or garden, or area, belonging to any house, with an intent to steal, he shall be deemed a rogue and vagabond within the intent and meaning of 17 G. II. c. 5.

**Punishment.**

By 4 & 5 Vic. c. 25, § 15, whosoever shall be convicted of the crime of burglary, shall be liable, at the discretion of the court, to be imprisoned at hard labour in the provincial penitentiary for the term of his natural life, or for any term not less than seven years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years.

**Warrant.**

County of —, } To the Constable of —, in the said county of —.  
to wit.

Forasmuch as A. J. of —, yeoman, hath this day made information and complaint upon oath, before me J. P. Esquire, one of her Majesty's justices of the peace for the said county, that yesterday, in the night, the dwelling-house of him the said A. J., at — aforesaid, was feloniously and burglariously broken open, and one silver tankard of the value of five pounds, of the goods and chattels of him the said A. J. feloniously and burglariously stolen, taken and carried away from thence; and that he hath good cause to suspect that A. O., late of —, in the township of —, in the said county, labourer, the said felony and burglary did commit: These are, therefore, in her said Majesty's name to command you, that immediately upon sight hereof you do apprehend the said A. O., and bring him before me, to answer the premises, and to be further dealt with according to law.—Herein fail you not. Given under my hand and seal, the — day of — 185 .

**BUTCHERS.**

No person using the trade of a butcher, shall sell, offer or expose to sale, by himself or any other, any fat oxen, steers, runts, kine, heifers, calves, sheep or lambs alive, on pain of forfeiting double value; half to the king, and half to him that will sue.—15 C. II., c. 8.

If any butchers shall conspire not to sell their victuals but at certain prices, every such person shall suffer for the first offence 10*l.* to the king, and if not paid in six days, he shall suffer twenty days' imprisonment, and shall only have bread and water for his sustenance; for the second offence 20*l.* in like manner, or the pillory; and for the third offence 40*l.* or pillory, and the loss of an ear, and to be taken as a man infamous, and not to be credited in any manner of judgment, and the sessions or leet may determine the same.—2 & 3 Edw. VI., c. 15. The punishment of pillory is abolished by the 4 & 5 V., c. 34, § 31.



A butcher that selleth swine's flesh meazled, or flesh dead of the murrain, shall for the first time be grievously amerced; the second time suffer judgment of the pillory; the third time be imprisoned and make fine, and the fourth time forswear the town. Ordinance for butchers.—*Haw. stat. V. 1, p. 181.*

If any butcher shall kill or sell any victual on the Lord's day, he shall forfeit six shillings and eight-pence, one-third to the informer, and two-thirds to the poor, on conviction before one justice, on his own view or confession, or oath of two witnesses, to be levied by the constable or churchwarden.—*3 C. c. 1.* No butcher shall put to sale any hide putrified or rotten, on pain of three shillings and four-pence for each offence.—*1 J. c. 22, § 2.* No butcher shall be a tanner or currier, on pain of six shillings and eight-pence a-day.—*1 J. c. 22, § 2, 25.* If any raw-hide shall wilfully and negligently be gashed in the flaying thereof, or being gashed, be offered to sale by any butcher or other, the offender shall forfeit two shillings and six-pence for such hide, and one shilling for a calf skin; half to the poor and half to the informer.—*9 An. c. 11, § 11.*

BY-LAWS.

By the Municipal Act, 12 Vic. c. 81, § 185, it is enacted as follows, viz: "that all persons committing any offence against any by-law lawfully made by any municipal corporation under the authority of this act, and with regard to prosecutions for which no other provision is hereby made, may be prosecuted in a summary way before any one or more justices of the peace having jurisdiction within the locality in which the offender shall be resident, or within that in which the offence was committed; and such justice or justices, or other authority before whom any conviction for any such offence shall be had (and any such offender may be convicted on the oath or affirmation of any competent witness other than the prosecutor or informer), shall have full power and authority to award the penalty, or the imprisonment, as the case may be, imposed by the by-law under which the conviction shall be had, with the costs of prosecution against the offender, and to commit the offender to the common gaol (if the offence be punishable by imprisonment) and to cause the penalty to be levied with costs, if not forthwith paid, by distress and sale of the goods and chattels of the offender, by warrant under the hand and seal of such justices, or one of them, or of the chairman or presiding officer of the court before whom such conviction was had; and one moiety of any such pecuniary penalty shall go to the informer or prosecutor, and the other moiety shall be paid to the treasurer or chamberlain of the corporation, against

the by-law whereof the offence shall have been committed, and shall form part of the funds at the disposal of such corporation. Provided always, *firstly*—that any such prosecution may be brought in the name and on the behalf of such corporation as aforesaid; and in that case, the whole of such pecuniary penalty shall be paid to the treasurer or chamberlain of such corporation, and form part of such funds as aforesaid: and provided, *secondly*—that any member of the municipal corporation, under the by-law whereof any such prosecution as aforesaid shall be brought, being *ex-officio*, or otherwise, a justice of the peace within such locality, may act as such with regard to such prosecution.

§ 186. And be it enacted, that as well with regard to any such prosecution, as to any suit, action or proceeding to which any corporation created or to be created by or under this act shall be a party, no member, officer or servant of such corporation shall be deemed an incompetent witness, nor shall his testimony be objected to on the ground of his being interested in the matter as such member, officer or servant of such corporation, nor shall he be liable to challenge on such ground as a juror, if he have no more direct interest in the issue of such suit or prosecution, or be not otherwise rendered incompetent; any law, &c., to the contrary notwithstanding.

§ 190. Original by-laws, and all minutes of proceedings of any such corporation shall be kept in the office of their clerk, and shall be open at all reasonable times and hours to the inspection of the public; and the clerk shall furnish copies thereof at the rate of 6d. per 100 words, or at such lower rate as the corporation shall appoint: and all meetings and proceedings of any such corporation shall be held openly, and so that no person shall be prevented from being present thereat, except only when the public interest shall require the contrary.

(a) *Information for penalty for infraction of a by-law, when one moiety of the penalty goes to the informer.*

County of ——— } Be it remembered, that on the ——— day of ———, in  
to wit. } the year of our Lord 18—, at the township of ———,  
in the said county, A. B., of ———, who, as well for the municipality of  
the said township as for himself doth prosecute in this behalf, personally  
cometh before me (or us) ——— of her Majesty's justices of the peace for  
the said county (or before me, C. D., Esq., town reeve of the said town-  
ship, as the case may be), and, as well for the said municipality as for  
himself, informeth me (or us) that E. F., of the township aforesaid,  
labourer, on the ——— day of ———, in the year aforesaid, at the town-  
ship aforesaid, in the county aforesaid (*here state the facts and circum-  
stances constituting the offence, as defined by the by-law*), contrary to

(c) Should not be upon oath: the informer being an interested party.

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the form of the by-law of the said municipality in such case made and provided; whereby and by force of the said by-law, the said E. F. hath forfeited for his said offence the sum of —; wherefore the said A. B., who sueth as aforesaid, prayeth the consideration of me (or us) the said justice (*justices or town reeve*) in the premises, and that the said E. F. may be convicted of the offence aforesaid; and that one moiety of the said forfeiture may be adjudged to the said municipality, and the other moiety thereof to the said A. B., according to the form of the statute in that case made and provided; and that the said E. F. may be summoned to appear before me (or us), and answer the premises, and make his defence thereto. A. B.

Exhibited before me (or us).

*Information on behalf of the Municipality alone, when the whole penalty goes to the Municipality.*

County of — } Be it remembered, that on the — day of —, in  
to wit. } the year of our Lord 18—, at the township of —,  
in the said county, A. B., of the said township, gentleman, township clerk (a) of the said township, who doth prosecute in this behalf for and in the name of the municipality of the said township, personally cometh before me (or us) — of her Majesty's justices of the peace for the said county (or before me, C. D., Esquire, town reeve of the said township) and for and on behalf of the said municipality, informeth me (or us) that E. F., of —, in the said county, labourer, on the — day of —, in the year aforesaid, at the township aforesaid, in the county aforesaid, did (*here state the facts and circumstances constituting the offence, as defined by the by-law creating it*), contrary to the form of the by-law of the said municipality in such case made and provided; whereby and by force of the said by-law, the said E. F. hath forfeited for his said offence the sum of —; wherefore the said A. B., who sueth as aforesaid, prayeth the consideration of me (or us), the said justice (*justices or town reeve*), in the premises; and that the said forfeiture may be adjudged to the said municipality, according to the form of the statute in such case made and provided; and that the said E. F. may be summoned to appear before me (or us), and answer the premises, and make his defence thereto.

Exhibited before —

A. B.

*Form of a Summons.*

County of —, } To the constable of the township of —, in the said  
to wit. } county:

Whereas information and complaint, in writing, hath been, this — day of —, 18—, exhibited at the township of —, in the county aforesaid, before me C. D., of the said township, esquire, one of her Majesty's justices of the peace for the said county (or *town reeve of the said township*), by A. B. of the same township, gentleman, township clerk of the said township, who doth prosecute in this behalf, for and in the name of the municipality of the said township, setting forth that E. F., late of the aforesaid township of —, labourer, on the — day

(a) Or any other officer or person prosecuting.

of —, in the year of our Lord 18—, at the township aforesaid, did *(here state the offence, as laid in the information)*, contrary to the form of the by-law of the municipality of the said township in such case made and provided; whereby and by force of the said by-law, the said E. F. hath forfeited for his said offence the sum of —: These are therefore to require you forthwith to summon the said E. F. to appear before me at my dwelling-house, in the said township of —, on — next, the — day of — instant, at the hour of —, in the — noon of the same day, to answer the said charge, and to be dealt with according to law; and be you then there, to certify what you shall have done in the premises. Herein fail you not.

Given under my hand and seal, at the township of — aforesaid, the — day of —, in the year of — and 18—.

C. D. (or town reeve). (L. s.)

*Oath of service of such Summons.*

County of —, } G. H., of the township of —, in the said county,  
to wit. } constable of the said township, maketh oath and  
saith, that he did on the — day of — instant, personally serve E. F.  
of the said township, labourer, with a true copy of the within summons.  
Sworn, &c.

*Summons of Witness, to be examined.*

County of —, } To the constable of the township of — in the said  
to wit. } county:

Whereas information hath been made before me C. D., of the aforesaid township of —, esquire, town reeve of the said township, that *(here state the offence alleged to have been committed, and by whom)*, contrary to the form of the by-law of the municipality of the said township in such case made and provided, and that J. K., of the aforesaid township of —, is a material witness to be examined concerning the same: These are therefore to require you to summon the said J. K. to appear before me at my dwelling-house, in the said township of —, on the — day of — instant, at the hour of — in the — noon of the same day, to testify the truth according to the best of his knowledge concerning the premises.

Given under my hand and seal, the — day of —, 18—.

C. D. (L. s.)

*(a) Form of Conviction.*

County of —, } Be it remembered that on the — day of —, in  
to wit. } the year of our Lord — at — in the county of  
—, A. B. of the same township, gentleman, township clerk of the  
said township, who doth prosecute in this behalf, for and in the name of  
the municipality of the said township, personally came before me C.  
D., Esq., one of her Majesty's justices of the peace for the said  
county, *(or town reeve of the said township)*, and for and on behalf of  
the said municipality informed me that E. F. of —, in the said county,  
labourer, on the — day of —, in the year aforesaid, at the town-  
ship aforesaid, in the county aforesaid did, *(here state facts set forth in*

(a) According to the form given in the \*2 W. IV. c. 4. See post title "Conviction."

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"Conviction."

the information), contrary to the form of the by-law of the said municip-  
ality in such case made and provided; whereupon the said E. F., after  
being duly summoned to answer the said charge, appeared before me on  
the — day of — in the year aforsaid, at — in the said county,  
and having heard the charge contained in the said information, declared  
that he was not guilty of the said offence, [or] (*as the case may happen  
to be*), did not appear before me pursuant to the said summons, (or  
*did neglect and refuse to make any defence against the said charge*),  
whereupon I (or) nevertheless I, (*as the case may be*), the said justice  
(or town reeve), did proceed to examine into the truth of the charge  
contained in the said information, and on the — day of — afore-  
said, at — in the county aforsaid, one credible witness, to wit.,  
A. W. of —, in the county aforsaid, labourer, (*or as the case may  
be*), upon his oath deposeth and saith, (*if E. F. be present, say in the  
presence of the said E. F.*) that on the — day of —, in the year  
of our Lord —, the said E. F. at —, in the said county, (*here  
state the evidence, and as nearly as possible in the words used by the  
witness; and if more than one witness be examined, state the evidence  
given by each, or if the defendant confess, then, instead of stating the  
evidence, say, and the said E. F. acknowledged and voluntarily con-  
fessed the same to be true*); and therefore it manifestly appearing to me  
that he the said E. F. is guilty of the offence charged upon him in the  
said information; I do hereby convict him of the offence aforsaid [and  
do declare and adjudge that he the said E. F. hath forfeited the sum of  
— of lawful money of this province for his said offence, and that he  
do pay the same to the treasurer of the said municipality, to form part  
of the funds thereof, together with the further sum of — by me  
awarded and adjudged to the said municipality, for their costs of this  
prosecution), (or, *when the judgment is by imprisonment thereon*).  
And I do thereupon adjudge that the said E. F. be imprisoned for his  
said offence in the common gaol of the said county of —, for the space  
of —), according to the form of the statute, and of the by-law of the said  
municipality in such case respectively made and provided. Given under  
my hand and seal the — day of —, in the year of our Lord 185—.

#### Warrant of Distress.

County of —, } To the constable of the township of —, in the said  
to wit. } county of —.

Whereas E. F. of —, labourer, is duly convicted before me,  
C. D., Esq., one of her Majesty's justices of the peace for the  
said county (or town reeve of the said township), for that he the  
said E. F., on the — day of —, in the year of our Lord 18—,  
did (*describe the offence as stated in the conviction*), contrary to  
the form of the by-law of the municipality of the said township  
of —, in such case made and provided, whereby and by force of the  
said by-law the said E. F. hath forfeited for his said offence the sum of  
—, of lawful money of this province, over and above the costs of the  
prosecution of the said offence, to be paid to the said municipality, and  
which said costs and charges I have allowed and assessed at the sum of  
—, according to the statute in that behalf, making together the full

sum of ——. These are therefore to command you forthwith to levy the said sum of —, by distraining the goods and chattels of him the said E. F., and if within the space of (a) — days next, after such distress by you taken, the said sum of — shall not be paid, together with the reasonable costs of taking and keeping such distress, that then you do sell the said goods and chattels so by you distrained, and out of the money arising by such sale that you do pay the said sum of — to the treasurer of the municipality of the said township, to be appropriated by the said municipality to the purposes of the said township, returning to him the said E. F. the overplus on demand, the reasonable charges of taking, keeping, and selling the said distress being first deducted; and you are to certify to me with the return of this warrant, what you shall have done in the execution hereof. Herein fail not. Given under my hand and seal at —, in the said county, the — day of —, A. D. 1850.

*Form of commitment, where the punishment is by imprisonment.*

County of —, } To the constable of the township of —, in the  
to wit. } county of —, and to the keeper of the common  
gaol at —, in the said county.

Whereas E. F. of —, in the said county, labourer, was this day duly convicted before me, C. D., Esq., one of her Majesty's justices of the peace for the said county, (or town reeve of the said township of —), for that he said E. F., on the — day of —, in the year of our Lord 185, did, (*here state the offence as described in the conviction*) contrary to the form of the by-law of the municipality of the said township of —, in such case made and provided; and I the said C. D., thereupon adjudged that he the said E. F., should be imprisoned for his said offence in the common gaol of the said county of — at — in the said county, for the space of —. These are therefore to command you the said constable of — aforesaid, to take the said E. F., and him safely to convey to the common gaol of the said county of —, at — aforesaid, and there to deliver him to the said keeper thereof, together with this precept; and I do hereby command you, the said keeper of the said common gaol, to receive the said E. F. into the said common gaol, there to imprison him for the space of — pursuant to his sentence aforesaid; and for your so doing this shall be your sufficient warrant. Given under my hand and seal, &c.

### CALENDAR OF PRISONERS.

By 3 Hen. VII. c. 3, the sheriff shall certify a list of the prisoners in his custody to the justices of gaol delivery, for the purpose of being calendared.

### CAPITAL PUNISHMENT.

By statute \*3 W. IV. c. 4, the preamble of which recites "that it is fit that it should be plainly declared in the statutes of this province for what crimes offenders shall be liable to be

(a) Not less than four days, nor more than eight days, by statute 27 Geo. II. ch. 20.

See also post title "Distress."

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punished with *death*, and that it does not seem to be indispensable for the security and well being of society, that the punishment of death should be inflicted in any other cases than those hereinafter mentioned. "It is therefore enacted, that persons convicted of the following offences shall suffer death as felons, viz.—1. High treason: 2. Murder: 3. Petit treason: 4. Rescuing persons convicted of murder or committed for murder: 5. Rape: 6. Carnal knowledge of a girl under the age of ten years: 7. Sodomy: 8. Robbery of the person: 9. Robbing the mail: 10. Burglary: 11. Arson: 12. Accessories before the fact to any capital offence: 13. Rioters to the number of twelve or more remaining after proclamation to disperse, pursuant to the 1 G. I. c. 5, or committing other offences mentioned in that act: 14. Burning the king's naval stores in any dock yard."

By 4 & 5 V. c. § 20, no person convicted of felony shall suffer death unless it be for some felony which was excluded from the benefit of clergy, by the law in force in that part of this province in which the trial shall be by the commencement of this act, or which shall be made punishable with death by some act passed after that day. § 32. It shall not be necessary to make any report to the governor of any convict under the sentence of death. § 33. If the court, upon the trial of any capital offence, shall be of opinion that under the particular circumstances of the case such offender is a proper subject for the royal mercy, the court may, instead of passing the sentence of death, order the same to be recorded. § 34. Which shall have the same effect as if sentence pronounced in open court. § 35. When the court shall be of opinion that the judgment of the law ought to be carried into effect, the court shall order and direct execution to be done on such offender in the same manner as the court was empowered to direct execution by the law as it stood before the passing of this act. § 36. This act not to affect the royal prerogative.

And by 4 & 5 Vic. c. 25, the following offences are made punishable with death, viz: § 6. Robbery with cutting, stabbing or wounding; § 14. Burglary and assault with intent to murder, or stabbing, cutting, wounding, beating or striking.

And by 4 & 5 Vic. c. 26, § 7, setting fire to any ship or vessel, with intent to murder or endanger the life of any person. § 8. Exhibiting false lights, with intent to bring any ship or vessel into danger, or maliciously doing anything to the immediate loss or destruction of any ship or vessel.

And by 4 & 5 Vic. c. 27, § 9, administering poison or other destructive thing; stabbing, cutting, or wounding any person, or causing by any means whatsoever any bodily injury dan-

gerous to life, with intent to commit murder. § 15. Buggery ; § 16. Rape ; § 17. Carnal knowledge of a girl under the age of ten years—are made capital offences punishable with *death*.

\* By 7 W. IV. c. 6, § 3, the Governor may commute the sentence of death (except in cases of high treason or murder, and then only by express authority from the Crown,) for transportation for life, or for a term of years, to such place in his Majesty's dominions as may be assigned for the reception of convicts ; or for banishment from this province for life or for any term of years ; or for solitary confinement, or confinement with or without hard labour in any penitentiary or house of correction that may be appointed for such purpose, either during life or for any term of years. § 4. Imprisonment after sentence to be reckoned in the term of transportation.

### CARRIERS.

It has been held that a carrier embezzling goods which he has received to carry to a certain place, is not guilty of felony, because there is not a felonious taking, but is liable only to a civil action.—1 *Haw.* 89, 90. But if a carrier open a pack and take out part of the goods, with intent to steal it, he may be guilty of felony, in which case it may be said, not only that such possession of a part distinct from the whole was gained by wrong, and not delivered by the owner, but also that it was obtained basely, fraudulently and clandestinely, in hopes to prevent its being discovered at all, or fixed upon any one when discovered.—1 *Haw.* 90 ; so if a carrier, after he has brought the goods to the place appointed, take them away again secretly, with intent to steal them, he is guilty of felony, because the possession which he received from the owner being determined, his second taking is in all respects the same as if he were a mere stranger.—1 *Haw.* 90 ; and if goods be delivered to a carrier, to be carried to a certain place, and he carries them to another place, and disposeth of them to his own use, this is felony, because this declareth that his intention originally was not to take the goods upon the agreement and contract of the party, but only with a design of stealing them.—*Kelynge*, 82. Where goods are delivered to a carrier, and he is robbed of them, he shall be charged and answer for them, by reason of the hire ; and generally, if a man delivers goods to a common carrier, to carry to a certain place, if he loses or damages them, an action *upon the case* lies against him ; for by the custom of the realm he ought to carry them safely.—1 *Bac. Ab.* 343. Where goods are stolen from a carrier, he may prefer an indictment against the felon, as for his own goods.—*Kelynge*, 39.

See post title "False receipts."

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## CATTLE.

By 4 & 5 Vic. c. 25, § 29, if any person shall steal any horse, mare, gelding, colt or filly, or any bull, cow, ox, heifer or calf, or any ram, ewe, sheep or lamb, or shall wilfully kill any of such cattle with intent to steal the carcase or skin, or any part of the cattle so killed, every such offender shall be guilty of felony, and being convicted thereof shall be liable at the discretion of the Court to be imprisoned at hard labour in the provincial penitentiary for any term not exceeding fourteen years, nor less than seven years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years.

By stat. 4 & 5V. c. 26, s. 16, if any person shall unlawfully and maliciously kill, maim or wound any cattle, every such offender shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be imprisoned at hard labour in the provincial penitentiary for any term not less than seven years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years.

## CATTLE RUNNING AT LARGE.

By the General Municipal Act, 12 V. c. 81, the municipalities of incorporated towns, villages and cities, are empowered to make by-laws "for restraining and regulating the running at large of horses, cattle, sheep, goats, swine and other animals, geese, turkeys and other poultry; and to impound, or provide for the impounding of the same; and for fixing the periods of the year during which such animals or poultry shall be permitted to run at large."

## CEMETERIES.

By the Municipal Act, 12 V. c. 81, the municipalities are authorized to make by-laws for "laying out, improving and regulating any public cemetery, and for selling or leasing such portions thereof as they may think proper, and for the improvement, ornament and protection of such cemetery."

By 13 & 14 V. c. 76, entitled "An Act to authorize the formation of companies for the establishment and management of cemeteries in Upper Canada," any number of persons not less than twenty, may form a company under the provisions of this act. § 2. And when they shall have subscribed and paid in a sufficient quantity of stock adequate, in their judgment, to the purchase of the ground required for a cemetery, and shall have executed an instrument according to the form in the schedule A, and shall have paid to their treasurer twenty-five per cent. upon the capital stock, intended by such

company to be raised for the purpose aforesaid, which sum shall not be less than that required for the purchase of the grounds necessary for such cemetery, and shall have registered such deed at full length, together with the treasurer's receipt for such first instalment of twenty-five per cent. with the register of the county, such company shall thenceforth become a body corporate by such name as shall be designated in such deed, with a common seal; and they and their successors, by their corporate name, shall be capable of taking, purchasing, having, holding, conveying, selling and departing with any piece or parcel of land in Upper Canada, to be used exclusively as a cemetery, or a place for the burial of the dead. § 3. Affairs of the company to be managed by *nine* directors, to be elected by the stockholders annually, by ballot, on the third Monday in January—each shareholder being entitled to one vote for every share he may hold up to ten, and one vote for every five shares above ten; but no stockholder shall vote unless he shall have paid at least ten shillings upon each share. § 4. Such lot or share in such cemetery to contain not less than 100 superficial feet, and the holder of any such lot, having paid as aforesaid, shall be deemed a shareholder, and every shareholder who shall have paid in not less than £2 shall be eligible for a director. § 5. The directors to elect a president, and to have the power of making by-laws for laying out, selling and management of the grounds—for regulating the erection of tombs, monuments or grave-stones therein, and for empowering the president to execute deeds or conveyances of plots of ground in the cemetery to shareholders; and shall keep a book for recording their by-laws and proceedings, which shall be open to public access without charge. § 6. The real estate of the company to be free from taxes: monies arising from sales to be applied first in payment of the original purchase of the land, and the residue in preserving, improving and embellishing the cemetery—and no dividend or profit shall be paid to the members. *Provided*, nevertheless, that the directors shall be *personally* liable for any judgment recovered against the company. § 7. Any company so formed as aforesaid shall furnish graves for strangers and the poor of all denominations, free of charge, on the certificate of a minister or clergyman of the denomination to which such person may have belonged, that the relatives of deceased are poor and cannot afford to purchase a lot: the directors may sell any lot of any size whatever, but no proprietor of a lot of a less quantity than 100 superficial feet, to be a member, or vote. § 8. The lots sold to be conveyed by deed, according to the form in Schedule D., which need not be registered. § 9. Any person who

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shall wilfully destroy, mutilate, deface, injure or remove any tomb, monument, grave-stone or other structure placed in any cemetery, or any fence, railing or other work for the protection or ornament of any cemetery, or of any tomb, monument, grave-stone or other structure aforesaid, or of any cemetery lot within any cemetery—or shall wilfully destroy, cut, break or injure any tree, shrub or plant within the limits of any cemetery, or play at any game or sport, or discharge fire-arms (save at a military funeral) in any such cemetery, or who shall wilfully and unlawfully disturb any persons assembled for the purpose of burying any body therein, or who shall commit any nuisance in any such cemetery, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof before any justice of the peace, or other court of competent jurisdiction, be punished by a fine of not less than *one pound*, nor more than *ten pounds*, according to the nature of the offence—and such offender shall also be liable to an action of trespass against him by such corporation for damages. § 10. Company to make regulations for ensuring burials being conducted in a decent and solemn manner. § 11. No body shall be buried in any vault under any chapel or other building in any such cemetery, nor within fifteen feet of the outer wall. § 12. Cemeteries to be enclosed with walls or fences, of the height of eight feet at the least. § 13. Cemeteries to be kept in good order. § 14. To be properly drained. § 15. Any such company causing or suffering to be brought or to flow into any river, spring, well, stream, canal, reservoir, aqueduct, pond, or watering place, any offensive matter from such cemetery, whereby the water shall be fouled, shall forfeit for every such offence *2l. 10s.* § 16. To be recovered with full costs by any party aggrieved. § 17. Who may also sue for further damage specially sustained by him; or if no special damage alleged, for the sum of *2l. 10s.* for each day, during the cause of complaint, after giving the company twenty-four hours' notice of the offence. § 18. Directors empowered to call for instalments, on pain of forfeiture. § 19. This act to be a public act.

For the Schedules—see the Act.

By 13 & 14 Vic. c. 17, reciting "that in many parts of Upper Canada the inhabitants are desirous of securing the title to land requisite for a burying ground, which shall not belong exclusively to any of the various denominations of christians, and that the same should be taken and held by trustees acting in a corporate capacity, and having perpetual succession," it is enacted that whenever the inhabitants of any township or locality in Upper Canada, to the number of ten or more, shall

desire to take a conveyance of land for the purpose aforesaid, it shall be lawful for them to appoint trustees, to whom and their successors, to be appointed as specified in the deed of conveyance, the requisite land shall be conveyed; and such trustees, and their successors in perpetual succession, shall hold the same accordingly; the quantity of land so conveyed not to exceed ten acres for any one township or locality.

### CENSUS.

By statute 10 & 11 Vic. c. 14, former acts are repealed. § 2 enacts that the Receiver General, Secretary of the Province, and the Inspector General, shall constitute and be a Board of registration and statistics. § 3. Board to have the general supervision of the statistics of the province, and shall draw up an annual report to be laid before the legislature. § 4. Secretary to be appointed. § 5. The first general census to be taken in the months of February and March, 1848, and a like census in same months in 1850, and also in the same months every fifth year afterwards. § 6. District councils in Upper Canada to divide each township into enumeration divisions, and to appoint one or more enumerators in each division so set off. But this act not to annul appointments of enumerators in any district, county, city, town or village, who may now, by any law in force, be the proper officer or officers for taking the census. § 7. That for the purposes of this act, the divisions of cities and incorporated towns as adopted for municipal purposes shall be the enumeration divisions of such cities or towns. And it shall be the duty of the councils of cities and towns, and boards of police of incorporated towns, to appoint enumerators therein, but not more than one for each city, &c., unless they see fit. § 8. District and other councils to apportion such money from the general revenues of such district, &c., as they shall deem sufficient for remuneration to the enumerators. § 9. Enumerators to visit every house within their division, and take an account in writing according to prescribed forms of the number of persons dwelling therein, and their age and occupation, and number of inhabited and uninhabited houses in such division, and other particulars specified in the form. § 10. Enumerators to demand from the head of every family, or from any member under twenty-one, and from the owners or managers of all factories, agents of companies and others, true answers to all such questions as shall be necessary for taking such accounts. § 11. Any such person refusing to answer, or wilfully obstructing any enumerator in the execution of his duties, shall for each offence, on conviction before any two justices of the peace for the district, city or town where



such person shall reside, incur a penalty of not less than 10s. nor more than 50s. and costs—such penalty and costs, if not forthwith paid, to be levied by distress and sale of the offender's goods and chattels under the warrant of such justices or either of them; and in default of distress, the offender to be committed by such justices to the common gaol of the district for any period not exceeding seven days: one half the penalty to belong to the informer: the other to the treasurer of the district, municipality, city, &c., and form part of the funds thereof, and be applied towards payment of the expences of the census. § 12. Enumerators to sign and certify their returns, and make oath or affirmation before any justice of the district, municipality, &c. of the truth and accuracy of the same, and lodge the same with the clerk of the peace of the district or city, &c., within one month after the account shall be taken. § 13. Any enumerator neglecting to make a return, or who shall wilfully make a false return, shall be guilty of a misdemeanor, and liable on conviction to a fine not exceeding £25, or imprisonment in the common gaol for any period not exceeding three calendar months, or both, in the discretion of the court before whom conviction had—and shall also, in case of a false return, be liable to the pains and penalties of perjury. § 14. Clerks of the peace, or city clerk, &c., to examine the returns of the enumerators, and to cause any inaccuracy to be corrected as far as possible; and to make an abstract therefrom, and transmit *triplicate* copies to the board within one month after receipt of such returns, and copies thereof shall be laid before both houses of parliament. § 15. The board to supply the requisite forms. § 16. Ministers of religion to keep a registry of baptisms, marriages, funerals and deaths, and forward same to the clerk of the peace or town clerk within five days after the first day of January, April, July and October in every year. § 17. In case of no resident minister or teacher, the heads of families to notify the township clerk of any birth, death or marriage. § 18. Returns to be forwarded by clerks of the peace and town clerks to the board on or before the first day of January, yearly. § 19. Coroners also to return lists of inquests and findings of juries to the board on or before the first of January yearly. § 20. Clerks of the peace to furnish lists (in triplicate) of convictions at Sessions, or before justices, at such periods as the board shall appoint. § 21. Any person neglecting or refusing to comply with this act in any matter for which no punishment is specially provided, shall be guilty of a misdemeanor and punishable accordingly, and all penalties incurred under this section to be applied as other penalties before provided for.

## CERTIORARI.

By 12 Vic. § 90, s. 1, returns required by the 16th section of last recited act to be made once a year only, within five days after the first of January. § 2. So long as such act, 10 & 11 Vic. c. 14, shall remain in force, it shall not be necessary for any minister, clergyman or justice, to return to the clerk of the peace the list of marriages solemnized by him, required by the 6th section of 11 G. IV. c. 36.

### CERTIORARI.

A certiorari is an original writ issuing out of the Court of Chancery or the King's Bench, directed in the king's name to the judges or officers of inferior courts, commanding them to certify or to return the records of a cause depending before them, to the end the party may have the more sure and speedy justice before the king or such justices as he shall assign to determine the cause.—1 *Bac. Abr.* 559; and no proceedings of any court of criminal jurisdiction can be removed into a superior court, but by a writ of error or *certiorari*.—2 *Haw. c.* 1, § 14.

A certiorari lies in all judicial proceedings in which a writ of error does not lie, and it is a consequence of all inferior jurisdictions erected by act of parliament, to have their proceedings returnable in the King's Bench.—*L. Raym.* 469, 580. And therefore a certiorari lies to justices of the peace even in such cases which they are empowered by statute finally to hear and determine; and the superintendency of the court of King's Bench is not taken away without express words.—2 *Haw.* 286. But it seems agreed that a certiorari should never be granted to remove an indictment after a conviction, unless for some special cause; as when the judge below is doubtful what judgment to give.—2 *Haw.* 286. Also, it seems a good objection against the granting a certiorari, that issue is joined in the court below and a *verdict* awarded for the trial of it.—2 *Haw.* 286.

It hath been adjudged that wherever a certiorari is by law grantable for an indictment, the court is bound of right to award it, at the instance of the king, because every indictment is at the suit of the king, and he has a prerogative of suing in what court he pleases. But it seems to be agreed, that it is left to the discretion of the court to grant or deny it at the prayer of the defendant.—2 *Haw.* 287. And the court will not ordinarily at the prayer of the defendant grant a certiorari for the removal of an indictment for perjury, or forgery, or other heinous misdemeanor, for such crimes deserve all possible discountenance, and the certiorari might delay, if not wholly discourage the prosecution.—2 *Haw.* 287.

## *How to be granted and allowed.*

1. On indictment or presentment, by statute 5 W. c. 11, and 8 & 9 W. c. 33, it is enacted "that in term time no writ of certiorari at the prosecution of any party indicted, shall be granted out of the King's Bench to remove any indictment or presentment of trespass or misdemeanor before trial had from before the justices in sessions, unless such certiorari shall be awarded upon such motion of counsel, and by rule of court made for the granting thereof. But in the vacation writs of certiorari may be granted by any justice of the King's Bench whose name shall be endorsed on the writ, and also the name of the person at whose instance it is granted, and all parties prosecuting such certiorari, shall before the allowance thereof, find two sufficient manucaptors who shall enter into a recognizance before a justice of the King's Bench, (who shall indorse the same on the writ), or before a justice of the peace of the county or place, in the sum of £20, with condition at the return of the writ to appear and plead to the said indictment or presentment in the said Court of King's Bench, and at their own cost and charges to cause and procure the issue that shall be filed thereon, or any plea relating thereto, to be tried at the next assizes for the county wherein the indictment or presentment was found, after such certiorari shall be returned, or the next term, if in London, Westminster or Middlesex, unless the court shall appoint another time, and if so, then at such other time; and to give due notice of such trial to the prosecutor or his clerk in the court, and also that the party prosecuting such writ of certiorari shall appear from day to day in the said Court of King's Bench, and not depart until he shall be discharged by the court.

And the said recognizance shall be certified into the King's Bench with the certiorari and indictment to be there filed, and the name of the prosecutor (if he shall be the party grieved) or some public officer shall be endorsed on the said indictment. And if the defendant prosecuting the writ of certiorari be convicted of the offence for which he was indicted, then the Court of King's Bench shall give reasonable costs to the prosecutor, to be taxed according to the course of the said court, who shall for the recovery thereof within ten days after demand and refusal of payment, on oath, have a attachment awarded, and the recognizance shall not be discharged until the costs are paid. But if the person procuring the certiorari, being the defendant, shall not before allowance thereof procure such manucaptors to be bound as aforesaid, the justices may proceed to the trial of the indictment in sessions, notwithstanding the writ of certiorari delivered.

*On a Conviction or Order.*

By 13 G. II. c. 18, no certiorari shall be granted to remove any conviction, judgment, order or other proceeding, before any justice of the peace, or quarter sessions, unless it be applied for *six calendar months* after such proceedings had or made, and unless it be duly proved upon oath that the party suing for the same hath given six days' notice thereof in writing to the justice or justices, or two of them (if so many there be), before whom such proceedings have been, to the end that such justices may shew cause, if they so think fit, against the issuing of the certiorari: and by 5 G. II. c. 19, no such certiorari shall be allowed to remove any such judgment or order, unless the party prosecuting the certiorari, before the allowance thereof, enter into a recognizance with sufficient sureties before a justice of the county or place, or before the justices at sessions where such judgment or order shall have been given or made, or before a justice of the King's Bench, in £50, with condition to prosecute the same at his own costs and charges with effect, without wilful delay, and to pay the party in whose favor the judgment or order was made within a month after the same shall be confirmed his full costs, to be taxed according to the course of the court where such confirmation shall be; and if he shall not enter into such recognizance, or shall not perform the conditions, the justices may proceed and make such further order for the benefit of the party for whom the judgment shall be given, in such manner as if no certiorari had been granted; the said recognizance to be certified into the King's Bench, and then filed with the certiorari and order or judgment removed there, and if the order or judgment shall be confirmed by the court, the person entitled to the costs for the recovery thereof, within ten days after demand made, upon oath of such demand and refusal of payment, shall have an attachment granted for the contempt, and the recognizance shall not be discharged till the costs are paid and the order complied with.

*E. 1 An.* A rule was made in the Court of King's Bench, that no certiorari should be granted to remove orders of justices, from which the law has given an appeal, to the sessions, before the matter be determined on the appeal, because it hinders the privilege of appealing; and that, if any order be removed before appeal, it should be sent down again. But if the time of appeal be expired, that case is not within the rule. By *Holt*, chief justice—but afterwards *M. 4 An.* in the case of *Skellington*—it was held, that advantage must be taken of this rule, upon the motion to file the order, for that after it is filed it is too late.—1 *Salk.* 147.

## The effect of it.

After a certiorari is allowed by the inferior courts, it makes all the subsequent proceedings on the record, that are removed by it, erroneous.—2 *Haw.* 293. But if a certiorari for the removal of an indictment before justices of the peace be not delivered before the jury be sworn for the trial of it, the justices may proceed.—2 *Haw.* 294. And the justices may set a fine, to complete their judgment, after a certiorari delivered.—4 *Ray.* 1515. A certiorari removes all things done between the *teste* and *return*.—4 *Ray.* 835, 1305.

## The return of it.

Every return of a certiorari ought to be under seal.—2 *Haw.* 294. And although the *custos rotulorum* keeps the records, yet must the justices to whom it is directed return the certiorari: and, therefore, if it is directed to the justices of the peace, and the clerk of the peace only return it, nothing is thereby removed.—2 *Haw.* 294. The certiorari may be sometimes to remove and send up the record itself, and sometimes but only the tenor of the record (as the words therein be), and it must be obeyed accordingly.—*Dalt. c.* 195; 2 *Haw.* 295.

If the person to whom a certiorari is directed, do make a false return, yet the court will not stay filing it on affidavit of its being false, except in public cases, as in commissioners of sewers, or for not repairing highways, or for some such special causes, because the remedy for a false return is either an action on the case at the suit of the party grieved, or an information at the suit of the king.—*Dalt. c.* 195. If the person to whom the certiorari is directed do not make a return, then an *alias*, that is, a second writ; then a *pluries*, that is, a third writ, or *quousm nobis significet* shall be awarded; and then an attachment.—*Crom.* 116.

The return of a certiorari may be thus:—

On the back of the writ indorse these words, or the like—

“The execution of this writ appears in a schedule to the same writ annexed.”

And that schedule may be thus, on a piece of parchment, by itself, and fixed to the writ:

County of —, } I, —, Esquire, one of the keepers of the peace  
to wit, } and justices of our lady the Queen assigned to  
keep the peace within the said county; and also to hear and determine  
divers felonies, trespasses, and other misdemeanors, in the same county  
committed, by virtue of this writ to me delivered, do, under my seal,  
certify unto her Majesty, in her Court of Queen's Bench, the indictment  
or conviction of which mention is made in the same writ, together with  
all matters touching the same. In witness whereof, I, the said —

## Challenge to Fight.

have to these presents set my seal. Given at —, in the said county, the — day of —, in the — year of the reign of her Majesty Queen —.

Then take the record of the said indictment, and close it within the schedule, and seal and send them up both together with the certiorari.

### Recognizance on Certiorari.

County of —, } Be it remembered, that on the — day of —, in  
to wit. } the — year of the reign, &c., A. B. of —,  
C. D. of —, and E. F. of —, came before me, J. C. Esquire, one  
of the keepers of the peace and justices of our lady the Queen in and  
for the county of —, and acknowledged to owe to our sovereign lady  
the Queen the sum of £50, of lawful money of Canada, to be levied  
upon their goods and chattels, lands and tenements, to her Majesty's use,  
upon condition that if — shall prosecute with effect, without any wil-  
ful or affected delay, at his own proper costs and charges, a writ of cer-  
tiorari, issued out of the court of our said lady the Queen, before the  
Queen herself, at Toronto, to remove into the said court all and singular  
the records of conviction, of whatever trespasses and contempts, against  
the form of the statute made and passed in the — year of her Maje-  
sty's reign, entitled, "An Act," &c., whereof the said — is convicted  
before me, J. C. Esquire, one of the keepers of the peace and justices  
of our said lady the Queen in and for the said county of —, and shall  
pay to the prosecutor, within one month next after the said record of  
conviction shall be confirmed in the said court, all his said full costs and  
charges, to be taxed according to the course of the said court; then this  
recognizance to be void, or else to remain in full force. Taken and  
acknowledged, the day and year first above said. J. C.

### CHALLENGE TO FIGHT.

A challenge to fight a duel is a high offence at law; or even an endeavour to provoke another to send a challenge; and the messenger or bearer of a challenge is equally culpable with him who sends it.—1 *Haw. c. 63, § 3*; 3 *Inst. 158*; 4 *Bl. Com. 150*. It is no excuse that the challenge is given under provocation, for if one person were to kill another in a deliberate duel, though under provocation, it would be murder in him and his second.—*R. v. Rice, 3 East. 581*. Where the provocation consisted in sending an abusive letter, it was held to be an indictable offence, and the act of sending such a letter was held to be an act done towards procuring the commission of the misdemeanor meant to be accomplished—*Rez v. Phillips, 6 East. 464*; so, words spoken which tend to a breach of the peace, are equally indictable, such as words conveying an express challenge, or a threat to beat another.—*R. v. Langley, 6 Mod. 125*; 2 *Ld. R. 1031*; and so, any words which are evidently intended to provoke a party to give a chal-



lence : it has been considered, however, that such words as *liar* and *knave*, do not tend immediately to a breach of the peace, though they are motives and *mediate* provocation for a breach of it.—*King's case*, 4 *Inst.* 181.

The punishment for this offence is discretionary, by *fine* and *imprisonment*, and is guided by such circumstances of aggravation as appear in each particular case.—1 *Haw. c.* 63, § 21; *Rex v. Rice*, 3 *East.* 384.

*Indictment for sending a challenge. (Archbold.)*

County of —, } The jurors for our lady the Queen, upon their oath  
to wit. } present, that J. S., late of the township of —,  
in the county of —, gentleman, being a person of a turbulent and  
quarrelsome temper and disposition, and contriving and intending not  
only to vex, injure and disquiet one J. N., and to do the said J. N. some  
grievous bodily harm, but also to provoke, instigate and excite the said  
J. N. to break the peace, and to fight a duel with and against him the  
said J. S., on the — day of —, in the — year of the reign of  
our sovereign lady Victoria, at the township aforesaid, in the county  
aforesaid, wickedly, wilfully and maliciously did write, send and deliver,  
and cause and procure to be written, sent and delivered unto him the  
said J. N. a certain letter, and paper writing, containing a challenge to  
fight a duel with and against him the said J. S., and which said letter  
and paper writing is as follows : (*here set out the letter, with such in-  
nuendoes as may be necessary*) to the great damage, scandal and disgrace  
of the said J. N., in contempt of our lady the Queen and her laws, and  
against the peace of our lady the Queen, her crown and dignity.

2nd count. And the jurors aforesaid, upon their oath aforesaid, do  
further present, that the said J. S. contriving and intending as aforesaid,  
afterwards, to wit, on the day and year aforesaid, with force and arms,  
at the township aforesaid, in the county aforesaid, wickedly, wilfully and  
maliciously did provoke, instigate, excite and challenge the said J. N. to  
fight a duel with and against him the said J. S., to the great damage,  
scandal and disgrace of the said J. N., in contempt of our lady the  
Queen and her laws, and against the peace of our lady the Queen, her  
crown and dignity.

CHAMPERTY.

ChamPERTY is a bargain made with a plaintiff or defendant  
in any suit, to have part of the land, or debt, or other thing  
sued for, if the party litigant prevails in the action or suit, the  
*champertor* agreeing to carry on the suit at his own expence;  
it amounts, in fact, to a purchase of the suit; a practice which,  
*Blackstone* says, is so much abhorred by our law, that it is one  
main reason why a *chose in action* is not assignable at com-  
mon law, because no man should purchase any pretence to sue  
in another's right.—4 *Bl. Com.* 135. This offence is a species of  
maintenance, and punishable by fine and imprisonment.—*Ibid.*

## CHANCE MEDLEY.

Chance Medley is where homicide is committed by a man upon a sudden affray, in his own defence.—4 *Bl. Com.* 184. The true criterion between *chance medley* and *manslaughter*, seems to be this,—where both parties are actually combatting at the same time when the mortal stroke is given, the slayer is then guilty of manslaughter; but if the slayer hath not begun to fight, (or having begun) endeavours to decline any further struggle, and afterwards being closely pressed by his adversary, kills him to avoid his own destruction, this is *chance medley*, or homicide excusable by *self-defence*.—*Ibid.* The party assaulted, therefore, in order to excuse himself in killing his assailant, must flee from him as far as he conveniently can, either by reason of some wall or ditch, or other impediment, or as far as the *fierceness* of the assault will permit him; for it may be so fierce as not to allow him to yield a step without manifest danger of his life, or enormous bodily harm, in which last predicament he may, in his own defence, kill his assailant instantly.—1 *Hale, P. C.* 483.

The penalty anciently inflicted on any one who had committed *chance medley*, seems to have been a forfeiture of a portion of the goods and chattels of the party, by way of fine.—*Fost.* 287; which, however, was remitted to him, as a matter of course, on his suing out, and paying for a writ of restitution.—2 *Haw.* 381; but to prevent this expense, in cases where the death has happened notoriously by misadventure or in self-defence, the judges now always direct a general verdict of acquittal.—*Fost.* 288; 4 *Bl. Com.* 188, note (1.)

And now, by stat. 4 & 5 Vic. c. 27, § 8, no punishment shall be incurred by any person who shall kill another by misfortune, or in his own defence, or in any other manner without felony.

## CHEATS.

*By the Common Law.*

Cheats, which are punishable by the common law, may in general be described to be deceitful practices, in defrauding or endeavouring to defraud another of his known right, by means of some artful device, contrary to the plain rules of common honesty; as by playing with false dice; or by causing an illiterate person to execute a deed to his prejudice, by reading it over to him in words different from those in which it was written; or by persuading a woman to execute a writing to another, as her trustee, upon an intended marriage, which in truth contained no such thing, but only a warrant of attorney to confess a judgment; or by suppressing a will, and such like.—1 *Haw.* 186.

On an indictment against the defendant, a miller, for changing corn delivered to him to be ground, and giving bad corn instead of it, it was moved to quash the same, because it was only a private cheat, and not of a public nature. It was answered, that being a cheat in the way of trade, it concerned the public, and therefore was indictable, and the court unanimously agreed not to quash it.—*T. 16, C. 2, K. and Wood, Sess. C. V. 1, 217.*

The selling of unwholesome provisions is a fraud indictable at common law.—*4 Bl. Com. 162; 2 East. P. C. 822; R. v. Johnston, 6 East. 133.*

Where a person who was committed to gaol under an attachment for a contempt in a civil action, counterfeited a pretended discharge (as from his creditor) to the sheriff and gaoler, under which he obtained his release from gaol, it was held that this was a cheat and misdemeanor at common law, in thus effecting an interruption to public justice.—*R. v. Fawcett, 2 East. P. C. 862, 962.* Public officers are also indictable for frauds committed in their public capacities; thus, where two persons enabled others to pass their accounts with the pay office in such a way as to defraud the government, they were held to be indictable for the fraud.—*R. v. Bambridge, cit. 6 East. 136.* A surveyor of the highways may be indicted for converting to his own use gravel which had been dug at the expense of the inhabitants of the parish, and for employing, for his own private gain and emolument, the labourers and teams of the parishioners, which he ought to have employed in repairing the highways.—*3 Chit. C. L. 666.* So also, any fraud which is practised on the public by means of *false weights or measures*, or any *false token*, having the semblance of public authority, and purposely calculated for deceit, and by which the public may be imposed upon, without any imputation of folly or negligence, is indictable at common law.—*2 East. P. C. 820.* As, where a person sells corn in a bushel, short of the statute measure, or puts something into the bushel to help to fill it up.—*R. v. Pinckney, 2 East. P. C. 820.* There appears, however, to be this distinction—where a man sells by *false weights or measures*, it is an indictable offence, but if *without false weights or measures*, he sells merely a less quantity than he pretends to sell, he is not then indictable, but liable only in an action for the deceit.—*R. v. Young, 3 T. R. 104, per Buller, J.; R. v. Nicholson, cit. 2 Burr. 1150; R. v. Driffield, say. 146.*

#### By Statute.

By statute 4 & 5 Vic. ch. 25, § 45; If any person shall by any false pretence obtain from any other person any chattel,

money or valuable security, with intent to cheat or defraud any person of the same, every such offender shall be guilty of a misdemeanor, and being convicted thereof shall be liable at the discretion of the court to be imprisoned at hard labour in the Provincial Penitentiary for any term not exceeding fourteen years, nor less than seven years, or imprisoned in any other prison or place of confinement for any term not exceeding two years, or to suffer such other punishment by fine or imprisonment, or by both, as the court shall award: Provided always, that if upon the trial of any person indicted for such misdemeanor it shall be proved that he obtained the property in question in any such manner so as to amount in law to larceny, he shall not by reason thereof be entitled to be acquitted of such misdemeanor, and no such indictment shall be removable by certiorari, and no person tried for such misdemeanor shall be liable to be afterwards prosecuted for larceny upon the same facts.

*Warrant to apprehend an Offender. (Burn.)*

County of —, }  
to wit: } To the constable of —, in the said county.

Whereas complaint hath been made unto us, whose names and seals are hereunto set, two of her Majesty's justices of the peace for the said county, upon the oaths of A. I. of —, yeoman, and B. I. of —, yeoman, that on the — day of —, A. O. of —, yeoman, did by a false privy token, (or counterfeit letter) that is to say, by (*here particularize the offence*) falsely and deceitfully obtain and get into his hands and possession (*here mention the things*) from C. I. of —, contrary to the statute in that case made. These are therefore to command you, upon sight hereof, forthwith to bring the said A. O. before us at —, to answer to the said complaint, and further to be dealt with according to law. Given under our hands and seals the — day of —.

### CHILDREN.

A child under ten years of age cannot be punished for any capital offence, whatever circumstances of a mischievous nature may appear.—*Moir*, c. 4 § 6; *Plowd.* 19; 1 *Hale*, 20; *Fost.* 349; 4 *Bl. Com.* 23; *Cowp.* 222, 3.

From a supposed imbecility of mind, the protective humanity of the law will not, without anxious circumspection, permit an infant under 14, to be convicted on his own confession.—*Cro. Jac.* 446; 1 *Hale*, 24; *Fost.* 70. Yet, if it appear, by strong and pregnant evidence and circumstances, that he was perfectly conscious of the nature and malignity of the crime, a jury may then find him guilty, and judgment of death may be given against him.—1 *Hale*, 20, 25, 434; *Fost.* 71; 4 *Bl. Com.* 23, *O. B.* 1784, p. 271. On the attainment of 14 years of age, the criminal actions of infants are subject to the same

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mode of construction as those of the rest of society; for the law presumes that the human mind has acquired at this period a complete sense of right and wrong.—*Doct. & St. c. 26; Co. Lit. 79, 171, 247; Dalt. 476, 505; 1 Haw. c. 1, (note 1).*

See post title "Orphan Children."

### CHILD STEALING.

By statute 4 & 5 Vic. c. 27, § 21; If any person shall maliciously, either by force or fraud, lead or take away, or decoy or entice away, or detain any child under the age of ten years, with intent to deprive the parent or parents, or any other person having the lawful care or charge of such child, of the possession of such child, or with intent to steal any article upon or about the person of such child to whomsoever such article may belong; or if any person shall, with any such intent as aforesaid, receive or harbour any such child, knowing the same to have been by force or fraud led, taken, decoyed, enticed away, or detained, as hereinbefore mentioned, every such offender, and every person counselling, aiding or abetting such offender, shall be guilty of felony, and being convicted thereof shall be liable to be imprisoned at hard labour in the Provincial Penitentiary, for any term not less than seven years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years: Provided, that no person claiming to be the father of an illegitimate child, or to have any right to the possession of such child, shall be liable to be prosecuted by virtue hereof on account of his getting possession of such child, or taking such child out of the possession of the mother, or any other person having the lawful charge thereof.

### CHURCHWARDENS.

By statute \*33 Geo III. c. 2, § 7, it is enacted, that as soon as there shall be any church built for the performance of divine service according to the use of the Church of England, with a parson or minister duly appointed thereto, then the inhabitant householders shall choose and nominate one person, and the said parson or minister shall nominate one other person, which persons shall jointly serve the office of churchwarden; and that such churchwardens, and their successors, duly appointed, shall be as a corporation to represent the inhabitants of the township or parish, and as such may have a property of goods or chattels of the parish, and may sue or defend in all presentments, indictments or actions, for the inhabitants of said parish. § 8. A list of the persons so nominated shall forthwith be communicated to a magistrate of the division, who may swear the same into office.

## Church of England.

### Form of the Oath.

You, A. B. do promise and swear, that you will faithfully, diligently and justly, serve and perform the office and duties of churchwarden, for the parish (or township) of —, according to the best of your abilities.—So help you God.

And every person having taken such oath shall be held to be lawfully appointed.

§ 9. A penalty of 40s. is imposed upon any person neglecting or refusing to signify his consent to enter upon such office, and to take the oath within seven days after such nomination; and any two justices may hold a special session for the purpose of naming others to serve the office, whose neglect or refusal to serve will be liable to the same penalty.

### CHURCH OF ENGLAND.

By the imperial statute 31 Geo. III. c. 31, § 36, his Majesty was empowered to make an allotment and appropriation of lands for the support of a protestant clergy, equal to *one-seventh* of the lands comprised in any grant or patent. § 38, 39, also to authorize the lieutenant-governor, with the advice of the executive council, to erect parsonages and endow them; and the lieutenant-governor was authorised to present incumbents, who are to enjoy the same in like manner as incumbents in England. § 40. Every such presentation shall be subject to the spiritual and ecclesiastical jurisdiction of the Bishop of Nova Scotia. § 41, 42. The provisions respecting the allotment of lands for the support of a protestant clergy, to be subject to be varied or repealed by any express provisions for that purpose contained in any act or acts of the provincial legislature, and assented to by his Majesty, and laid before the British Parliament previous to receiving his Majesty's assent.

Since the passing of this act several rectories have been established and endowed in various parts of Upper Canada, over which the Hon. and Rt. Reverend Doctor John Strachan, Lord Bishop of Toronto, now presides as the Diocesan.

By 4 & 5 Vic. c. 74, § 1, it is enacted that the soil and freehold of all churches now or hereafter to be erected, and of the church-yards and burying-grounds attached thereto, shall be in the parson or incumbent for the time being, and that the possession thereof shall be in the incumbent and churchwardens. § 2. Pew-holders and holders of sittings to form a vestry. § 3. Vestry meeting to be holden on *Monday* in *Easter* week yearly, after due notice thereof given during divine service on *Easter Sunday*, for the purpose of appointing church-wardens for the ensuing year; one to be appointed by the incumbent, and the other by the vestry. In case the incumbent shall neglect to

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nominate one, then both to be elected in the manner aforesaid; and in case the vestry shall neglect to elect a church-warden, then both shall be nominated by the incumbent: Provided, that if from any cause a vestry meeting shall not take place at the time aforesaid, church-wardens may be appointed at any subsequent vestry meeting: in case of death, change of residence to twenty miles or more from the church, of either of the church-wardens, a vestry meeting shall be called for the election of another. § 4. None to be eligible except members of the Church of England of full age, and members of the vestry. § 5. To hold office for the current year, and until the appointment of successors. § 6. Church-wardens to be a corporation to represent the interest of such church and of the members thereof, and may sue and be sued, &c., and prosecute indictments, presentments, and other criminal proceedings in respect of such churches, church-yards, and things appertaining thereto, and may, in conjunction with the rector or incumbent, execute faculties or conveyances, or other proper assurances in the law to pew-holders by purchase or lease, and grant certificates for sittings at the expense of the applicants, and to sell, lease, and rent pews and sittings upon such terms as may be settled at vestry meetings to be holden for that purpose. § 7. In case of absolute purchase, pews to be construed as freehold of inheritance not subject to forfeiture by change of residence or by discontinuing to frequent the same, and may be sold and assigned to any purchaser being a member of the church. § 8. Pew-holders to have the right of action against any person injuring or disturbing. § 9. Churchwardens, within fourteen days after the appointment of successors, to deliver an account to them in writing, in a book or books to be kept for that purpose and signed by them, of all monies received by them and sums due, and also of all goods, chattels, and other property of such church or parish in their hands, and of all monies paid and of all other things concerning their said office: and shall receive and deliver all such remaining in their hands unto their successors, which account shall be verified by oath before one or more justices; and said books shall be carefully kept by the churchwardens, and may be inspected by any member of such vestry on payment of *one shilling*: and in case churchwardens shall make default in yielding such account, or in delivering over such money or goods, their successors may proceed against them at law or in *equity*; and in case of the re-appointment of churchwardens, such account shall be made and rendered at an adjourned vestry meeting *fourteen* days after such reappointment. § 10. Incumbent or churchwardens may call a vestry meeting at any time, upon application in writing of six

members of such vestry; and in case of refusal, then *one week* after such demand any *six members* of such vestry may call same by notice to be affixed on the outer church door (or doors) at least one week previous. § 11. The rector or incumbent to be chairman at all vestry meetings if present, and if absent such person as the majority shall name; vestry clerk to be secretary; proceedings to be entered in a book and kept by the churchwardens. § 12. Pew rents to be regulated at vestry meetings. § 13. The organist, vestry clerk, sexton, and other subordinate servants of the church to be appointed by the churchwardens. § 14. Fees on marriages, baptisms, and other services, and burials, to be regulated by the ordinary, or in case of no ordinary, by the bishop. § 15. Vestries to make by-laws for regulating their proceedings and management of the church property. § 16. Grants of property for the use of the church to be valid, notwithstanding the statutes of *mortmain*. § 17. Church endowments may be made upon the bishop's license, and the founder to have the right of presentation in perpetuity. § 18. No spiritual jurisdiction to be conferred by this act.

### CITIES.

By the Municipal Act, 12 Vic. c. 81, § 82, (a) *amended* by the 13 & 14 Vic. c. 64, it is enacted, that the cities named in Schedule C. be incorporated, with all the powers of incorporated towns, to be exercised through and in the name of the "mayor, aldermen and commonalty" of such city. § 33. [Two] aldermen and two councillors to be chosen for each ward, collectors' rolls to be furnished, and the common council of each such city to be formed of such aldermen and councillors, in the same manner as the town council of any town, and all the rules and regulations in this act, as applied to incorporated towns, by way of reference to those for incorporated villages or otherwise, shall apply to cities; the mayor to be elected from among the aldermen; qualification for alderman to be real estate held by him in fee simple or in freehold within the city or liberties, of the assessed value of £500, or being a tenant, from year to year, or for years, of real property within the city or liberties at a *bona fide* rental of £60 per annum or upwards, or receipt of £60 or upwards of yearly rent from real property within such city or liberties; and for councillor, real estate to the value of £300, or being a tenant from year to year, or for years, of real property within the city or liberties at a *bona fide* rental of £30 per annum or upwards, or in receipt of £30 or upwards of yearly rent from real pro-

(a) The words between the brackets [ ] show the amendments.

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erty within such city or liberties; aldermen and councillors to be chosen by the male inhabitants, freeholders or householders, entered on the roll and resident in the ward, and assessed as proprietors or tenants for a house or land, or both, to the value of £50, and by no other. § 84. Incorporated towns containing more than 15,000 inhabitants may petition to become a city. § 85. Cities, for all municipal and judicial purposes, to be counties, but not to exclude county municipal councils from holding their sittings, &c. within such cities or liberties. § 86. Justices for the county to have no jurisdiction over offences committed within the city or liberties. § 87. [Aldermen of cities to be justices of the peace, and from the time of erection of any town into a city] commission of the peace for such town to cease. § 88. Chief constable and a high bailiff to be appointed for each city, [who may by by-law be united in one person]. § 89. City liberties may be made outer wards. § 90. Any such outer ward, containing as many inhabitants as contained in the least populous ward of the city, or as much assessed property as in the least wealthy ward, may, by proclamation from the mayor under the city seal, be annexed to the city, by such name as the common council shall think fit. § 91. Such outer ward then to cease to be a part of the liberties and be a ward of the city, with all incidental things. § 92. The county gaol, court house and house of correction to continue to be the gaol, &c. of the city. § 93. That besides a police [office and police magistrates, as provided with respect to incorporated towns as aforesaid, having the like powers as herein provided with respect to the police,] there shall be a court of record in each city, to be called the Recorder's Court, in which the recorder shall preside, assisted by one or more aldermen, or, in the absence of the recorder, the mayor or one of the aldermen, to be elected by the aldermen; and such court shall have like jurisdiction, as to crimes, offences and misdemeanors committed in the city and liberties, as the Courts of Quarter Sessions now have, as well as in matters of civil concern not belonging to the ordinary jurisdiction of a court of justice, as have been or may hereafter be by law vested in Quarter Sessions. § 94. Recorder's Court to hold four sessions in the year, viz., on the second Monday in the months of January, April, July and October. § 95. Inhabitants of cities to be exempt from serving on juries except in City Courts, [trials at bar] and Courts of Assize, *Nisi Prius*, Oyer and Terminer and General Gaol Delivery. § 96. The grand jury of Recorder's Court to consist of twenty-four persons, summoned by the high bailiff under precepts signed by the recorder (or alderman substitute). § 97. Panel of petit

jurors to be not less than thirty-six, nor more than sixty jurors, to be summoned by the high bailiff in like manner. § 98. Residents of the cities or liberties only to sit on such juries. § 99. Grand juries to have power over all offences committed within the city or liberties. § 100. The like process as in Sessions to be used in the Recorder's Courts. § 101. On defendant's acquittal, prosecutor's costs to be paid out of the city funds, upon reasonable cause shewn for prosecution. § 102. Recorder may suspend high bailiff, chief constable &c. from their duties and appoint others *pro tem*. § 103. Clerk of the Common Council to be clerk of the Recorder's Court. § 104. Recorder to be a barrister of *five* years' standing and appointed by the crown, and *ex-officio* justice of the peace for the city, with a salary of not less than £250, payable quarterly out of the city funds, but not to be appointed until the city corporation request. § 105. Office of recorder and police magistrate may be vested in the same person. § 106. Common Council of the city to have the same powers as town councils, § 107. and may moreover make by-laws for the following purposes, viz. :

## CITY BY-LAWS.

*Firstly.*—For erecting and establishing, and also providing for the proper keeping of a city-hall, court-house, gaol, house of correction and house of industry, in and for such city and the liberties thereof, and appointing the inspectors of any such house of industry.

*Secondly.*—For regulating, in their discretion, the erecting of buildings, and preventing wooden buildings and wooden fences from being erected in such city.

*Thirdly.*—For borrowing under the restrictions and upon the security hereinafter mentioned all such sums of money as shall or may be necessary for the execution of any city work within their jurisdiction, and the scope of the authority by this act conferred upon them.

*Fourthly.*—For raising, levying, and appropriating such moneys as may be required for all or any of the purposes aforesaid, by means of a rate to be assessed equally on the whole ratable property of such city, according to any law which shall be in force in Upper Canada concerning rates and assessments.

*Fifthly.*—For making all such laws as may be necessary and proper for carrying into execution the powers herein vested or hereafter to be vested in the corporation of such city or in any department or office thereof, for the peace, welfare, safety and good government of such city, as they may from time to time deem expedient, such laws not being repugnant to this or any other act of the parliament of this province, or of the parliament of Upper Canada, or to the general laws of that part of this province: Provided always, nevertheless, firstly, that no person shall be subject to be fined more than *five* pounds exclusive of costs, or to be imprisoned more than *thirty* days for the breach of any by-law or regulation of such city: and provided also, secondly, that no person shall be compelled to pay a greater fine than *twenty*

pounds, for refusing or neglecting to perform the duties of any municipal office, when duly elected or appointed thereto.

*Sixthly.*—For the repeal, alteration, or amendment, from time to time, of all or of any of such by-laws, and the making others in lieu thereof as to them may seem expedient for the good of the inhabitants of such city.

**SCHEDULE C.**

1. Hamilton—2. Kingston—3. Toronto—(for the city liberties and divisions see the Schedule to the Act).

See also *post* titles, "Municipal Corporations" and "Towns"

**CLERGY.**

By stat. 4 & 5 Vic. c. 27, § 23, it is enacted that if any person shall arrest any clergyman or minister of the gospel, upon any civil process, while he shall be performing divine service, or shall, with the knowledge of such person, be going to perform the same, or returning from the performance thereof, every such offender shall be guilty of a misdemeanor, and being convicted thereof shall suffer such punishment by fine or imprisonment, or by both, as the court shall award.

See also *post* title "Punishment," § 36.

**CLERK OF THE PEACE.**

The clerk of the peace is an officer belonging to the sessions of the peace; and his duty is to read indictments, enrol the proceedings, draw the process, and record other matters which appertain to the jurisdiction of the quarter sessions; he also certifies into the Court of Queen's Bench transcripts of indictments, outlawries, attainders, and convictions had before the justices of the peace within the time limited by any writ of *certiorari* directed to the justices to return such proceedings; and he ought to be an able and sufficient person residing in the county or division for which he is appointed.—*Deacon's C. L.* 246.

The clerk of the peace is appointed by the Lieutenant Governor, by commission under the great seal of the province, and holds his office *quamdiu se bene gesserit*. He may also execute his office by deputy.—37 H. VIII. c. 1.

By stat. 1 W. & M. c. 21, § 6, if he shall misdeemean himself in office, and a complaint in writing be exhibited against him to the justices in sessions, the justices may, on examination and due proof thereof, suspend him from his office; and before entering upon the execution of his office, must take the following oath, besides the oaths of allegiance, supremacy and abjuration.

## Clerk of the Peace.

I, A. B., do swear that I have not, nor will pay any sum or sums of money, or other reward whatsoever, nor give any bond or other assurance to pay any money, fee or profit, directly or indirectly, to any persons whomsoever, for such nomination and appointment. So help me God.

### *Duties of his Office. (Dickenson.)*

The clerk of the peace, by himself, or his sufficient deputy, must be in constant attendance on the court of quarter sessions. He gives notice of its being holden or adjourned; issues its processes; records its proceedings, and does all the ministerial acts necessary to give effect to its decisions. It is his duty when prosecutors do not choose to seek professional assistance, to draw bills of indictment. In the actual course of the sessions it is his duty to read the acts directed to be read in sessions; to call the jurors and make known their defaults and excuses to the courts; to call the parties under recognizance, whether to prosecute, plead or give evidence; to present the bills to, and receive them from the grand jury; to arraign prisoners; to receive and record verdicts; to administer all oaths, and make true entries of all proceedings. By an ancient statute, he is bound to certify to the Court of King's Bench, the names of such as shall be outlawed, attainted, or convicted of felony; and if he shall discharge or conceal any fine or forfeiture, unless by rule of court, he is liable to forfeit treble value, half to the king and half to him that shall sue, to lose his office, and be incapacitated ever to hold any office connected with the revenue.—22, 23, Car. II. c. 22, § 9. Neither he, nor his deputy, may act as solicitor, attorney or agent, or sue out any process at any general quarter sessions, where he shall execute the office of clerk of the peace, or deputy, on pain of £50.—22 G. II. c. 46, § 4.

### *His duties by Provincial Statute.*

**Convictions.** By statute \*40, G. III. c. 1, § 6, to grant certificates *gratis* from the records of any conviction or pardon granted; and by statute 4 & 5 Vic. c. 12, sec. 4, to publish returns of convictions within seven days after the first adjournment of the General Quarter Sessions, in one public newspaper of the district, and fix up a schedule of such returns in the court-house, and a conspicuous place in his office. § 5. Within twenty days after the end of each quarter sessions, to transmit to the inspector-general a true copy of all such returns within his district.

**Hair and Dewlase Act,** 8 Vic. ch. 8, § 6. To make list of claims once in every three months, and affix the same in some conspicuous part of the court-house, and cause the same to be

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publicly read and proclaimed in open court at the General Quarter Sessions, immediately after the charge to the grand jury, and give certificates thereof.

*Census Act, 10 & 11 Vic. c. 14, § 14.* To examine enumerators' returns, make abstracts therefrom, and transmit *triplicate* copies to the "Board of Registration and Statistics." § 18. To forward returns of "Births, deaths and marriages," as filed in his office under the statute, to the board, on or before the 1st January, yearly. § 20. To furnish triplicate lists of convictions at sessions, or before justices, at such periods as the board shall appoint.

*Jurors Act, 13 & 14 Vic. ch. 55, § 18.* To prepare ballots. § 19. To bring into court (annually on the first day of sessions next, after the first of October) and deliver to the chairman, the jurors' books and ballots, verified by oath. § 20. To proceed (with the chairman) to ballot as directed by the act for grand jurors of superior courts. § 21. For grand jurors of inferior courts. § 22. Jury lists to be certified and deposited with the clerk of the peace. § 23. To deposit correct copies of jurors' books in the office of each of the clerks of the crown and pleas, and in that of the deputy for the county or union of counties, for which the same shall have been so prepared, on or before the 31st December. § 25. To be present on the drafting of jury panels. § 27. Mode of proceeding thereat. § 65. To copy from the sheriff's list the fines from jurors, making default, on the roll of fines and forfeitures imposed at Quarter Sessions, to be estreated and levied accordingly. § 73. Clerks of the peace guilty of dereliction of duty, under § 18, 19, 20, 21, 22 and 23, liable to £50 penalty.

The clerk of the peace should also make a return to the crown officers, of all forfeited recognizances, in order that the parties in default may be prosecuted thereon. He is *virtually* also the *custos rotularum*, or keeper of the records of the county.

*Sessions Fees due to the Clerk of the Peace, and to be paid out of the County Funds. • 47 G. III. c. 11.*

	£	s.	d.
Drawing the precept, and attending justices (a) to sign the same, and transmitting it to the sheriff.....	1	0	0
Attending each Quarter Sessions.....	1	10	0
Making up the records of each sessions.....	2	10	0
Notice of every appointment.....	0	1	0
Making up estreats of each session, and transmitting same to the Inspector General.....	0	5	0

(a) Commissioners in the Act.

*To be paid by the parties.*

	£	s.	d.
Every recognizance for the peace or good behaviour.....	0	2	0
For discharging the same.....	0	2	6
Subpoena.....	0	2	6
Bench warrant.....	0	5	0
Drawing indictment.....	0	10	0
Allowance of certiorari.....	0	5	0

§ 2. This act not to deprive the clerk of the peace of such other fees as are allowed by act of parliament for other services.

*Other Fees to be taken by the Clerk of the Peace, by Statute.*

	£	s.	d.
For each certificate of Dower, '37 G. III. c. 7, § 2; '50 G. III. c. 10, § 2.....	0	5	0
For each certificate of alienation of real estate, by <i>femmes covert</i> , '2 G. IV. c. 14, § 2.....	0	5	0
For certificates to ministers of Church of Scotland, to authorise their marrying, '38 G. III. c. 4, § 2.....	0	5	0
For certifying notices under the heir and devisee act, 8 Vic. c. 8, § 6.....	0	2	6

*Fees to be taken by the Clerk of the Peace, established by the Judges, under 8 Vic. c. 38.*

See the printed "Tariff of Fees," published in 1840.

*Form of the appointment of a Deputy.*

I, G. G., clerk of the peace in and for the county of York, do hereby make, substitute and appoint J. H. S. D., of the city of Toronto, in the said county, gentleman, my true and lawful deputy, in the office of clerk of the peace for the said county, so long as I shall hold the same, and during the continuance of my will and pleasure. Witness my hand and seal, this — day of — 18—.

## COIN.

By 4 & 5 V. c. 17, § 1, no copper or brass coin, or token of any description, except the lawful copper coin of the United Kingdom of Great Britain and Ireland, shall be imported into this province; nor shall any be manufactured therein, except under the authority of the governor to some person or persons, body politic or corporate, to import or manufacture the same. § 2. No such permission to be granted, unless such coin or tokens be stamped with the nominal value thereof, and with the name of the issuers, and such coins shall be payable or redeemable on demand, by such issuers, at the nominal value thereof, in lawful current coin. § 3. Coins or tokens imported or manufactured contrary to this act shall be forfeited to her Majesty, and the manufacturer or importer incur a penalty not exceeding £5 currency for every pound troy weight thereof;

and it shall be lawful for any two or more justices of the peace, on the oath of any credible person, that any such coin or tokens have been so unlawfully manufactured or imported as aforesaid, to cause the same to be seized and detained, and to summon the party in possession of the same to appear before him, and if it shall appear to his satisfaction, on the oath of any credible witness other than the informer that such coin or tokens have been manufactured or imported in contravention of this act, such justices shall declare the same forfeited, and shall place the same in safe keeping, to await the disposal of the governor, for the use of the province; and if it shall appear to the satisfaction of such justices, that the possessor of such coin or tokens knew the same to have been so illegally manufactured or imported, he may condemn such person or persons to pay the penalty aforesaid, with costs, and may commit him, her, or them, or any of them, to the common gaol of the district, for a period not exceeding two months, until paid. § 4. If it shall appear to the satisfaction of such justices, that the possessors were not aware of the same having been illegally manufactured or imported, such penalty may be recovered by any person from the owners, who shall sue for the same in any court of competent jurisdiction, on the oath of one credible witness other than the person so suing. § 5. Officers of her Majesty's customs may seize any coin or tokens imported, or attempted to be imported contrary to this act, and detain the same as forfeited, to await the disposal of the governor, for the use of the province. § 7. After the expiration of thirty days from this act, no person shall utter, tender, or offer in payment, any copper or brass coin, other than the lawful coin of the United Kingdom aforesaid, or the tokens of the chartered banks, or the *Banque du Peuple*, at the city of Montreal, heretofore imported or manufactured under the authority of the executive, or by virtue of the ordinances of Lower Canada, or American cents, or such coins or tokens as may have been lawfully imported into or manufactured in this province, according to the provisions of this act, under a penalty of the forfeiture of double the nominal value thereof, to be recovered with costs in a summary manner, on the oath of any one credible witness other than the informer, before any justice, who may, if penalty and costs be not forthwith paid, commit the offender to the common gaol of the district for a time not exceeding eight days, or until paid. § 8. One moiety of the penalties imposed by this act (but not the coins or tokens) shall go to the informer, and the other moiety to her Majesty, for the use of the province. § 11. Certain ordinances in Lower Canada repealed, as soon as this act shall come into force.

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By stat. 4 & 5 V. c. 93, § 1, the \*36 G. III. c. 2, \*49 G. III. c. 8, \*7 G. IV. c. 4, \*11 G. IV. c. 6, \*6 W. IV. c. 27, \*3 V. c. —, and all other acts relating to the currency, or to the amount thereof as a legal tender, are repealed. § 2. The sterling to be equal to £1 4s. 4d. currency. § 3. This act not to affect any former contract or agreement.

By the subsequent clauses the following value is fixed on foreign coin as a legal tender, viz. :—

	Currency.		
	£	s.	d.
§ 4. The United States eagle, coined before the 1st July 1834, and weighing 11 dwts. 6 g. troy.....	2	13	4
§ 4. The United States eagle, coined since, and before 1841	2	10	0
§ 5 The gold coins of Great Britain and Ireland, or of the United States, coined before the 1st July 1834, being multiples or divisions of those before mentioned, and of proportionate weight, shall, for proportionate sums, pass current, and be a legal tender to any amount by tale, so long as such coins shall not want more than two grains of the weight assigned, deducting one halfpenny currency for each quarter of a grain any such coin shall want of such weight: Provided, that in any one payment above £50, the payer may pay, or the receiver may insist on receiving, said British gold coins, or gold coins of the United States coined before the 1st July 1834, by weight, at the rate of £4 14s. 10d. currency per ounce troy, and in like manner any sums tendered or to be received in the gold coin of the United States, coined since said day, may be weighed in bulk, and be a legal tender at the rate of £4 13s. currency per ounce troy, when offered in sums of not less than £50 currency.			
§ 6. Forty franc piece (French gold coin) coined before the passing of this act, weighed in bulk, in sums of not less than £50 currency, per ounce troy.....	4	13	1
The old doubloon of Spain, or quadruple pistole, and the Mexican and Chilian doubloon, coined before this act, weighed in bulk, in sums of not less than £50 currency, per ounce troy .....	4	9	7
Gold coins of La Plata and of Columbia, coined before this act, weighed in bulk, in sums of not less than £50 currency, per ounce troy.....	4	9	5
Gold coins of Portugal and of Brazil, coined before this act, weighed in bulk, in sums of not less than £50 currency, per ounce troy.....	4	14	6
§ 7. The milled dollar of Spain, the United States dollar and of the States of Peru, Chili, Central America, and South America, and of Mexico, coined before 1841, and not weighing less than 17 dwts. 4 gr troy, each .....	0	5	1
The half dollar of same, and of the proportionate weight, each .....	0	2	6½

	£	s.	d.
The quarter dollar .....	0	1	3
The eighth .....	0	0	7½
The sixteenth .....	0	0	3½
§ 8. The five franc silver piece of France, coined before the passing of this act, weighing not less than 16 dwts. each	0	4	8

*British Coins.*

British crown .....	0	6	1
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§ 10. All other divisions of the silver coin of the United Kingdom of Great Britain and Ireland, lawfully current therein, of proportionate weight, shall, for proportionate sums, pass current, and be a legal tender to the amount of £2 10s. currency, and no more. The holder of bank notes and other securities, exceeding £5, not liable to receive more than that sum (in small coin) if presented at one time. § 11. Copper pennies of the United Kingdom to pass for one penny currency, and the halves and quarters in proportion, such copper coin to be a legal tender for *one shilling* currency and no more. § 12. If any person shall colour, gild, or case over with gold or silver, or with any wash or materials producing the colour of gold or silver, any coin of coarse gold or of coarse silver, or of base metal resembling any coin made or declared to be current by this act, or if any person or persons shall bring and import, or cause to be brought and imported into this province, any forged, false or counterfeit gold, silver or copper coin, like to any of the gold, silver or copper coin made or declared to be lawfully current in this province, knowing the same to be false, forged or counterfeit, or any coin of coarse gold, or of coarse silver, or of base metal, coloured, gilded or cased over with gold or silver, or with any wash or materials producing the colour of gold or silver, and resembling any such coin, or any piece of gilded silver, resembling any such coin, knowing the same; or if any person shall utter or tender in payment to any person or persons (as being any of the gold, silver or copper coins hereby made and declared to be current money) any false or counterfeit (a), counterfeited to any of the gold, silver or copper coins made and declared to be current by this act, as hereinbefore specified, or to any of the higher or lower denominations thereof, knowing the same to be false or counterfeit, such person shall be guilty of a misdemeanor, and on conviction, shall be liable to be imprisoned and kept at hard labour in the penitentiary, in the township of Kingston, for not more than four years; and for a second offence, shall be deemed guilty of felony, and punished accordingly. § 13. If any per-

(a) The word *corn* is omitted in the act.

son shall form, make, cut, sink, stamp, engrave, repair or mend, or shall assist therein, or shall have in his or her possession (except for some lawful purpose) any die, plate, press, tool or instrument, paper, metal or material of any kind, and constructed, devised, adapted or designed for counterfeiting or imitating any coin lawfully current in this province under the authority of this act, or any bank note, bill, or note or writing purporting to be a bank note (whether of any chartered bank or otherwise, and whether the bank whose note shall be intended to be counterfeited or imitated be or be not established within this province) in circulation in this province, or in any one of the United States of America, adjoining this province, such person shall be guilty of a misdemeanor, and punished accordingly; and the proof that such implements were made or were in the possession of such person for some lawful purpose shall lie upon the defendant. § 14. One justice, on complaint made before him, upon oath of one credible person, that there is just cause to suspect that any person has been concerned in making, counterfeiting or imitating any such coin, bank note, bill, note or writing as aforesaid, may, by warrant under his hand, cause the dwelling-house, room, work-shop, out-house or other buildings, yard, garden, ground or other place belonging to such suspected person, to be searched for any such counterfeit coin, bank notes, bills, notes or writings, and if any such, or any such die, plate, press, tool or instrument, paper, metal or material as aforesaid, shall be found in the possession or custody of any person or persons whomsoever, not having the same for some lawful purpose, any person or persons discovering the same may seize and forthwith carry the same before a justice having jurisdiction within the locality in which the same shall be seized, who shall cause the same to be secured and produced in evidence against any person who shall or may be prosecuted for any such offence as aforesaid, in any court of competent jurisdiction, and the same, after being so produced in evidence, shall, by order of the court, be defaced or destroyed, or disposed of as the court shall direct. § 15. Any person to whom any pretended gold, silver, or copper coin, shall be tendered in payment, of a suspicious appearance, may cut or break such coin, and if counterfeit, the person who tendered it shall bear the loss, otherwise the person who shall have cut or broken it shall receive it for a sum proportionate to its weight; and if any question shall arise whether such coin be counterfeit, one justice may determine; and if he entertain any doubt, may summon three skilful persons, the decision of a majority of whom shall be final. § 16. Upon counterfeit coin being produced in court, the court

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shall order the same to be cut in pieces in open court, or in the presence of a justice, and then delivered to the lawful owner.

By 12 Vic. c. 20, after reciting that defects existed in the law touching the counterfeiting coin, it is enacted, that if any person shall falsely make or counterfeit, or cause to be made or counterfeited, any coin resembling, or apparently intended to resemble or pass for any of the Queen's current gold or silver coin, or any of the gold or silver coin made or declared to be lawfully current in this province, such person shall be guilty of *misdemeanor*, and on conviction shall be liable to imprisonment in the penitentiary for not more than four years; and upon a second offence shall be deemed guilty of *felony*, and on conviction punished accordingly. § 2. Variation in date between the forged coin and the lawful coin described in the indictment, or upon any *die*, shall not be a ground of acquittal.

By 13 & 14 Vic. c. 9, it is enacted, that notwithstanding the *seventh* section of 4 & 5 Vic. c. 93, the dollars and half dollars of the nation's weights and dates in said section shall not pass for 5s. 1d., and for 2s. 6½d. respectively, but shall respectively pass for 5s. and 2s. 6d., as also the dollars and half dollars of the same nations, and weights of later date. § 2 authorises the governor in council to cause *silver* coins to be struck for circulation in this province to pass for 5s., 2s. 6d., 2s., 1s. 3d., 1s., 6d., and 3d. each, and to be a legal tender at those rates to the amount of 2l. 10s. currency, and no more, subject to the proviso in the *tenth* section of said act. § 3 authorises the governor in council to cause *gold* coins to be struck for circulation in this province, to pass respectively for 1l. 5s., 1l., 12s. 6d., and 10s. each, and to be a legal tender at those rates to any amount. § 4. The cost of such gold and silver coin to be defrayed out of the consolidated revenue fund of the province. § 5. This act to come in force upon the 1st January, 1851, and not before.

#### *Commitment for uttering Counterfeit Coin.*

County of —, } J. C., Esq., one of the justices of our lady the Queen  
to wit, } assigned to keep the peace within the county of —,  
to the constable of — in the said county, and to the keeper of the  
common gaol at — in the said county.

These are to command you, the said constable, in her Majesty's name, forthwith to convey and deliver into the custody of the said keeper of the said common gaol, the body of E. F., charged this day upon the oath of A. B. before me the said justice, with having on the — day of — at — in the said county, unlawfully and deceitfully uttered and paid to him the said A. B. one piece of false money, made and counterfeited to the likeness and similitude of a British crown, of the lawful and current money of this province; the said E. F. then

## Collector of Rates.

and there knowing the said piece of money to have been false and counterfeit; and you, the said keeper, are hereby required to receive the said E. F. into your custody, in the said common gaol, and him there safely keep until he shall be from thence discharged by due course of law. Given under my hand and seal, &c. J. C.

### COLLECTOR OF RATES.

By the municipal act, 12 Vic. c. 81, § 22, it is enacted, that it shall be the duty of the collector for the township to produce at the opening of every such election for a township, or for any ward thereof, a fair copy of the collector's roll, made up next before such election, so far as such roll contains the names of the freeholders and householders of such township, if the election shall be by general township meeting, or so far as such roll contains the names of the freeholders and householders of the ward for which such election is held, if the election be for a ward of such township, with the amount of the assessed value of the real property for which they shall be respectively assessed on such roll: which said copy shall be verified by affidavit or affirmation of such collector appended to or endorsed upon such copy, and sworn or affirmed before any justice for the county, to the effect that the same is a true copy of such roll, and that it contains the names of all the freeholders and householders in such township, if such election be by general township meeting, or of such ward, if the election be for a ward of such township, and the amount for which they shall have been assessed as entered upon such roll as aforesaid. § 28. That the municipality for each township shall, so soon as conveniently may be, after their own election or appointment, nominate and appoint three assessors for the township, and one collector for the town, who shall hold office from the time of their appointment until the third Monday in January of the next year, and until a successor be appointed, and in case of vacancy by death, or removal of residence, the municipality shall fill up the vacancy by a new appointment at its next meeting. § 31. Remuneration of township officers to be settled by by-laws, where the same is not settled by statute. § 44. Upon the election of police trustees for *unincorporated* villages, the collector of the township shall deliver to the person appointed to preside at such election, a true copy of the collector's roll, made up next before such election, so far as such roll contains the names of the resident freeholders and householders of such incorporated village, with the amount they shall be assessed on the roll: such copy to be verified by affidavit or affirmation in the manner prescribed in § 22. § 57. It shall be the duty of the returning officer for *incorpo-*

rated villages to procure a correct copy of the collector's roll for such village, or of the roll of the township in which such village is situated, so far as such roll exhibits the names of the freeholders and householders rated upon such roll, within the limits of such village, with the amounts they shall be assessed upon such roll, which copy shall be verified in like manner as the copies of collectors' rolls produced at the township elections. § 78. Town council for each town shall appoint three assessors and one collector for each ward, to make assessments and collect taxes. § 189. In case of a writ of execution against any municipal corporation, the sheriff shall, by precept directed to the collector, command him to levy and collect, by rate, the amount of such execution, and return such precept with the amount levied (after deducting his per centage) to such sheriff.

See also title "Assessment," p. 72, for collectors powers and duties under the General Assessment Act.—13 & 14 Vic. c. 67.

*Form of Oath by Collector, verifying copy of the Roll according to the 22 § of the 12 Vic. ch. 81, to be endorsed thereon.*

County of —, } A. B. of the township of —, in the county of —,  
to wit. } yeoman, collector of rates for the said township,  
maketh oath and saith, that the within is a true copy of the collector's roll for the said township of —, made up next preceding the election, now about to be holden for township councillors in the said township, so far as the same relates to the said township of —, (or to the ward of —, in the said township) and that the same contains the names of all the freeholders and householders in such township (or ward) and the amount for which they have been severally assessed as entered upon such roll.

Sworn, &c.

A. B.

## COMMITMENT.

There is no doubt but that persons apprehended for offences which are not bailable, and also all persons who neglect to offer bail for offences which are bailable, must be committed—2 *Haw.* 116; and whosoever a justice is empowered by any statute to bind a person over, or to cause him to do a certain thing, and such person, being in his presence, shall refuse to be bound, or to do such thing, the justice may commit him to the gaol, there to remain till he shall comply—2 *Haw.* 116. If a prisoner be brought before a justice, expressly charged with felony upon oath, the justice cannot discharge him, but must bail or commit him—2 *H. H.* 121; but if he be charged with suspicion of felony only, yet if there be no felony at all proved to be committed, or if the fact charged as felony be in truth no felony in point of law, the justice may discharge him; but if a man be killed by another, though it may be misadventure, or self defence (which is not properly felony), or in making an assault upon a minister

of justice in execution of his office (which is not at all felony), yet the justice ought not to discharge him, for he must undergo his trial for it, and therefore he must be committed—2, *H. H.* 221.

See also further on this subject *ante* title, "Bail."

A married woman may be committed, who is a material witness upon any charge of felony, if she refuses to find sureties for her appearance at the sessions—*Bennett v. Watson*, 3 *M. & S.* 1; and so with regard to witnesses generally—if they refuse to be bound over to appear on the prosecution, they may be committed; and minors or infants under 21 years of age, as well as married women, are liable to find sureties. A justice of the peace in England may commit a person to prison in England, for an offence committed in Ireland, in order that the offender may be sent over and tried there—*R. v. Kimberley*, *Str.* 848; and so upon the same principle a justice of the peace in Canada may commit to gaol in this province, any person charged with felony committed in England, Scotland, or Ireland.

Where contemptuous and libellous words are spoken of a justice of the peace in the execution of his office, *and in his presence*, it seems that he may commit the party for a contempt—*R. v. Ravel*, 2 *Salk.* 240; *Mayhew v. Locke*, 7 *Taunton*, 63.

By stat. 5 H. IV. c. 10, all felons shall be committed to the common gaol, and not elsewhere; but by stat. 6 Geo. c. 19, vagrants and other criminals, offenders, and persons charged with small offences, may, for such offences, or for want of sureties, be committed either to the common gaol or house of correction, as the justices may think proper.

If a man commit felony in one county, and be arrested for the same in another county, he may be committed to gaol in that county where he is taken.—*Dalt.* c. 170; and if he escape and is taken on fresh suit in another county, he may be carried back to the county where he was first taken.—*Dalt.* c. 170. Also, by stat. 24 G. II. c. 55, if a person is apprehended upon a warrant, indorsed in another county, for an offence not bailable, or if he shall not there find bail, he shall be carried back into the first county, and be committed (or if bailable, bailed) by the justices in such first county.

#### *Form of the Commitment.*

It must be in writing, either in the name of the king and only tested by the person who makes it, or it may be by such person in his own name, expressing his office or authority, and must be directed to the gaoler or keeper of the prison—2 *Haw.* 19; it should contain the name and surname of the party committed, if known—if not known, then it may be sufficient to describe the person by his age, stature, complexion, colour of his hair,

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and the like—and to add that he refuseth to tell his name—1 *H. H.* 577; it should set forth that the party is charged upon oath—2 *Haw.* 120; it ought to contain the cause—as, for treason, or felony, or suspicion thereof—otherwise the prisoner would not only be entitled to his discharge, under the *habeas corpus* act, but if no cause be expressed, and the prisoner escape, neither himself nor the gaoler would be punishable for the escape; whereas if the commitment contained the cause of imprisonment, the escape itself will then be an offence of the same degree as that for which the party was committed—2 *Inst.* 52, 591. The cause also should be stated with *sufficient certainty*, in order that the party may know for what he is committed, and that it may appear to the court or judge, upon a *habeas corpus*, whether the cause assigned for the commitment was a legal one or not; therefore if the commitment be for felony, the warrant ought not to state generally for *felony*, but it should state the special nature of the felony—as felony for the death of J. S., or burglary in breaking the house of J. S., otherwise the court could not determine whether the offence amounted to felony or not.—2 *Hale*, 122; 2 *Inst.* 592; 1 *Ld. Ray.* 213.

Although the form of a commitment for trial may be defective, yet the committing magistrate may issue a warrant of *detainer*, remedying the defect, and this, even after the issuing of a *habeas corpus*.—*R. v. Gordon*, 1 *B. & A.* 572. But where the commitment is final and by way of *punishment*, it is essentially necessary that the offence (for which the commitment is made) be described with certainty. A commitment therefore of a person, as an apprentice or servant, for disobeying his indentures or articles, was held bad for uncertainty.—*R. v. Everett*, *Cald.* 26. And if a man be committed for nonpayment of two sums, one of which is not due, the warrant of commitment is bad for the whole.—*Exp. Addis*, 1 *B. & C.* 90.

A commitment in *execution* must allege the party to have been convicted of the offence, and it is bad if it merely state that he was charged with it.—*R. v. Rhode*, 4 *T. R.* 320; *R. v. Cooper*, 6 *T. R.* 509; 12 *East.* 78, *note* (a). It must be distinctly expressed in the warrant whether the commitment be for a time *certain*, or only till the payment of a fine, for the defendant ought to know for what he is in custody, and how he may regain his liberty; therefore, if he be committed for a fine, it ought to be till he pay the fine; if the intent be to punish him by fine and imprisonment, it ought to order imprisonment for such a time, and from thence till he pay his fine.

By stat. 17 G. II. c. 5, § 32, where any offender is committed by any justice, out of sessions, to the house of correction, by virtue of any law in force which does not expressly limit the

time and manner of punishment, the justice shall commit the offender to be kept to hard labour until the next general or quarter sessions, or until discharged by due course of law; but two justices (of whom the committing justice must be one) may discharge the offender before the sessions if they see cause; or the sessions may do so, or continue him in custody not exceeding three months; it must be under seal, and without this the commitment is unlawful; the gaoler is liable to false imprisonment, and the wilful escape by the gaoler, or breach of prison by the felon, makes no felony.—1 *H. H.* 383. But this must not be intended of a commitment by the sessions, or other court of record; for then the record itself, or the memorial thereof, which may at any time be entered of record, is a sufficient warrant, without any warrant under seal.—1 *H. H.* 584. It should have also set forth the place at which it was made—2 *Haw.* 119; and it must have a certain date of the year and day.—2 *H. H.* 123.

#### *Charges of the Commitment.*

As to the immediate charges of the commitment, and the conveyance of the offender to the gaol, it is provided by statute 3 Jac. I, c. 10, § 1, that every person who shall be committed to gaol by any justice of the peace, for any offence, if he has means or ability thereto, shall bear his own reasonable charges of his conveyance to gaol; and the charges of such as shall be appointed to guard him thither, and in default of payment, the same may be levied by distress on his goods and chattels, if he shall have any in the county; and by statute 27 Geo. II. c. 3, if the offender has not sufficient effects to bear these charges, then a magistrate shall, upon examination on oath, make an order on the treasurer of the county to pay the same. *Note.*—By the Habeas Corpus Act, 31 Car. II. c. 21, § 2, the charge of conveying an offender is limited to twelve pence a mile; and as security is required before a man is removed, under that act, that he shall not escape by the way, this of course, renders guards in that case not so necessary.

#### *Gaoler shall receive the Prisoner.*

If the gaoler shall refuse to receive a felon, or take any thing for receiving him, he shall be punished for the same, by the justices of gaol delivery.—4 Ed. III. c. 10; *Dalt. c.* 170. But if a man be committed for felony, and the gaoler will not receive him, the constable must bring him back to the town where he was taken, and that town shall be charged with the keeping of him, until the next gaol delivery; or the person that arrested him may, in such case, keep the prisoner in his

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own house.—*Dalt. c. 170.* But in other cases, it seems that no one can justify the detention of a prisoner in custody out of the common gaol, unless there be some particular reason for so doing; as, if the party be so dangerously sick that it would apparently hazard his life to send him to the gaol, or there be evident danger of a *rescue*, or the like.—2 *Haw. 118.*

By statute 3 Hen. VII. c. 3, the sheriff or gaoler shall certify the commitments to the next gaol delivery.

### *Commitment—How it may be discharged.*

It seems that a person legally committed for a crime certain, cannot (unless under the Habeas Corpus Act) be lawfully discharged by any one but the king, till he be acquitted on his trial, or have an *ignoramus* found by the grand jury, or none to prosecute him on a proclamation for that purpose by the justices of gaol delivery: but if a person be committed on a bare suspicion, without an indictment, for a supposed crime, when afterwards it appears that there was none; as, for the murder of a person thought to be dead, who afterwards is found to be alive; it hath been holden that he may be safely dismissed without any further proceeding.—2 *Haw. 121.* This position, however, will not always hold good; for, though a person supposed to be murdered may have recovered from the injuries he received, yet the offender may still be indicted for an *attempt to murder*, or do the party some bodily harm, in which case it would be highly improper that any gaoler should take upon himself to discharge the prisoner, without an order from a magistrate.

A commitment after a conviction, for a time certain, is a commitment in execution, and does not admit of bail.—*Anon. 11; Mod. 45.* But, on a commitment to the sessions, under the Vagrant Act, 17 Geo. II., c. 5, § 32, two magistrates (of whom the committing magistrate was one) might discharge the prisoner before the sessions.—*R. v. Rhodes, 4 T. R. 220.* When the commitment is till payment of a fine certain, it follows of course, that the party is entitled to be set at liberty upon payment of it.—*Dalt. c. 170, § 12.*

### *Warrant of Commitment.—(for Felony).*

County of —, } J. P., esquire, one of her Majesty's justices of the  
to wit. } peace for the said county, to the constable of —,  
in the said county, and to the keeper of the (common gaol) at the city  
of —, in the said county. These are to command you the said constable, in her Majesty's name, forthwith to convey and deliver into the custody of the said keeper of the said (common gaol) the body of A. B., charged this day before me the said justice, on the oath of C. D., of —, yeoman, and others, for that he the said A. B. (on the —

day of —, in the year of our Lord —, at —, in the said county, two pieces of gold coin, called sovereigns; one woollen cloth coat, and one linen shirt, of the monies, goods and chattels of the said C. D., feloniously did steal, take and carry away) and you the said keeper are hereby required to receive the said C. D. into your custody in the same (common gaol), and him there safely to keep, until he shall be thence delivered by due course of law. Herein fail you not. Given under my hand and seal, at the city of —, in the said county, the — day of —, in the year of our Lord 18—. J. P.

*Commitment upon a Conviction where the punishment is by imprisonment, &c. (Archbold).*

County of —, } To the constable of —, in the said county, and to  
to wit. } the keeper of the gaol (or house of correction)  
at —, in the said county.

Whereas C. D., late of —, in the said county, labourer, was on this day duly convicted before me J. P., esquire, one of her Majesty's justices of the peace for the said county, for that he the said C. D. (stating the offence, as in the conviction) against the form of the statute in that case made and provided; and I, the said J. P., thereupon adjudged the said C. D. for his said offence, to be imprisoned in the house of correction (or gaol), at —, in the said county, and there kept to hard labour for the space of — calendar months. These are therefore to command you, the said constable of — aforesaid, to take the said C. D., and him safely to convey to the house of correction (or gaol), at — aforesaid, and there to deliver him to the said keeper thereof, together with this precept: and I do hereby command you the said keeper of the said house of correction (or gaol), to receive the said C. D. into the said house of correction (or gaol), there to imprison him (and keep him to hard labour) for the space of — calendar months; and for your so doing this shall be your sufficient warrant. Given under my hand and seal, &c.

*Commitment in default of immediate payment of a Penalty.*

(Unless the Act requires the immediate payment of a penalty, under the 27 Geo. II. c. 20, it cannot be levied until four days after the conviction).

County of — } To the constable of —, in the said county, and to  
to wit. } the keeper of the house of correction (or gaol), at  
—, in the said county.

Whereas C. D., late of —, in the said county, labourer, was on this day duly convicted before me J. P. esquire, one of her Majesty's justices &c., for that he the said C. D. (&c. stating the offence as in the conviction) against the form of the statute in that case made and provided; and (I) the said J. P., thereupon adjudged the said C. D. for his said offence to (&c. as in the conviction, to the words calendar months), unless the said sum shall be sooner paid: and whereas the said C. D. being so convicted as aforesaid, and being now required to pay the said sums, hath not paid the same, or any part thereof, but herein hath made default; these are, therefore, to command you the said constable of

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— aforesaid, to take the said C. D., and him safely to convey to the house of correction, at — aforesaid, and there to deliver him to the said keeper thereof, together with this precept; and I do hereby command you the said keeper of the said house of correction (or gaol) to receive the said C. D. into the said house of correction, there to imprison him (and keep him to hard labour [if authorised by the statute]) for the space of — calendar months, unless the said sum shall be sooner paid; and for your so doing this shall be your sufficient warrant. Given under my hand, &c.

*Commitment in default of payment of a Penalty, within a limited time.*

County of —, } To the constable of —, in the said county, and  
to wit, } to the keeper of the house of correction, (or gaol)  
at —, in the said county.

Whereas C. D., late of —, in the said county, labourer, was on the — day of — last past, duly convicted before me J. P., one of her Majesty's justices &c., for that he the said C. D. (&c. stating the offence as in the conviction) against the form of the statute in that case made and provided; and (I) the said J. P., thereupon adjudged the said C. D. for his said offence, to pay (&c. as in the conviction, to the end of the adjudication), and (I) the said J. P., then and there ordered that the said sums should be paid by the said C. D., on or before the — day of — then next; and whereas the said C. D. hath not on or before the said — day of —, paid the said several sums or any part thereof, nor hath he yet paid the said several sums, or any part thereof, but therein hath made default. There are therefore to command you the said constable of — aforesaid, to take the said C. D., and him safely to convey to the house of correction (or gaol) at —, and there to deliver him to the said keeper thereof, together with this precept; and I do hereby command you the said keeper of the said house of correction (or gaol), to receive the said C. D. into the said house of correction, there to imprison him (and keep him to hard labour) for the space of — calendar months, unless the said sums shall be sooner paid; and for your so doing this shall be your sufficient warrant. Given under my hand and seal, at —, in the said county, this — day of — in the year of our Lord 18—.

### COMMON SCHOOLS.

By 13 & 14 Vic. c. 48, § 1—former acts 7 Vic. c. — and 12 Vic. c. 83, are repealed. § 2. Annual school meetings are to be held in villages, towns, cities and townships throughout Upper Canada, on the second Wednesday in January, at the hour of 10 in the forenoon. § 3. One trustee in each school section is to be elected at each annual school meeting: the same individual may be re-elected (with his own consent) during the four next years after going out of office. § 4. Mode of calling the first school meeting in a new section. § 5. At the first school section meeting, the majority are to elect a chairman and appoint a

secretary: the chairman to have a casting vote, but no other vote: at the request of any two electors a poll is to be granted: at such meeting *three* trustees are to be elected for such section, who are to retire in succession as provided. § 6. At the township annual school section meeting the majority present are to—

1. Elect a chairman and secretary. 2. To receive and decide upon the report of the trustees under the eighteenth clause of the twelfth section of this act. 3. To elect one or more persons as trustees, to fill up vacancies: no teacher in such section to hold the office of school trustee. 4. To decide respecting the salary and expenses of the schools.

§ 7. Voters at such meetings being required shall make a declaration of their qualification in the form prescribed: any false declaration is to be a *misdemeanor* punishable by fine or imprisonment, at the discretion of the Quarter Sessions, or by a penalty of not less than 25s., nor more than 50s., to be recovered by the school trustees before any justice of the peace within such section. § 8. Any trustee refusing to serve shall forfeit 25s., and after election and not refusing to accept, refusing or neglecting duty, shall forfeit £5, to be recovered as above: trustees may resign with consent of colleagues and local superintendent. § 9. The proper person neglecting to call annual school meeting to forfeit 25s., and any *two* freeholders may, within *twenty days* after, call such meeting by giving six days' notice. § 10. Trustees of each school section to be a corporation—not to cease for want of trustees, but in such case any *two* freeholders may, on giving six days' notice, call a meeting, which shall elect three trustees, as prescribed by the 5th section, such trustees retiring in succession. § 11. Site of the school-house to be fixed by arbitration, in case of difference.

§ 12. *Duties of the Trustees.*—1. To appoint a secretary-treasurer, for certain duties, as prescribed. 2. A collector of school rates; his remuneration not to be less than five, nor more than ten per cent. on collection. 3. To take and keep possession of all the common school property. 4. To provide school premises and accommodation. 5. To employ teachers and fix their salaries, and establish both male and female schools, if they think proper. 6. To give orders to teachers for school monies, but to none but qualified teachers. 7. To provide for the salaries of teachers and the expenses of the schools, as desired by a majority of school electors at a special meeting, and to employ all lawful means for collecting the same; and to make additional rate, if necessary, to make up any deficiency. 8. To make out a rate list and warrant for collection, payable monthly, quarterly, half-yearly or yearly, as they may think expedient. 9. To apply to the municipality of the township, or employ their own authority for raising and collecting school monies by rate, according to valuation on the assessor's or collector's roll. 10. To exempt indigent persons. 11. To sue defaulters. 12. To cause notices to be posted, and fix the place of annual school meeting,

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and to call special meetings for filling up vacancies. 13. To permit residents in such section, between the ages of five and twenty-one, to attend the school, upon their complying with rules and paying fees. 14. To visit the school and see that it is conducted according to law. 15. To provide proper and prohibit improper books for the school. 16. To exercise corporate powers for the fulfilment of any contract. 17. To appoint a librarian and establish a school library. 18. To ascertain the number of resident children between the ages of five and twenty-one in their section, on the 31st day of December, yearly; and to prepare and read their annual school report at the annual section meeting, including receipts and expenditures, such accounts to be audited if required. 19. To prepare and transmit before the 15th January the annual school report to the local superintendent.

## *Contents of Report.*

1. Time of keeping school open. 2. Amount of monies received, from what sources and how expended. 3. Number of resident children of school age; attendance of pupils in winter and summer. 4. Branches of education taught, text books used, number of public examinations, lectures and visits, and other information respecting school premises and library.

§ 13. Any trustee knowingly signing a false report, or teacher keeping a false school register, or making a false return, with the view of obtaining a large proportion of school monies, shall forfeit to the school fund £5, upon conviction before any justice of the peace, on the oath of any one credible witness, to be levied with costs, by distress and sale of the goods of the offender, under warrant of such justice; or said offender shall be liable to be tried and punished for *misdo-meanor*. § 14. Foreign books not to be used without the express permission of the council of public instruction: religious books prohibited, if objected to by parents or guardians.

## *Common School Teachers and their Duties.*

§ 15. School teachers to be qualified by certificate. § 16. *Teachers' Duties:*

1. To teach diligently all the branches required according to engagement, and the provisions of this act. 2. To keep school registers—to maintain order and discipline—to keep a visitors' book, and solicit visitor's remarks. 3. To have a public examination at the end of each quarter, giving due notice thereof to parents and guardians, and the trustees and school visitors in the neighbourhood. 4. To furnish, when desired, information respecting the school to local or chief superintendent. 5. On leaving school to deliver up to the trustees' order the registers and visitors' books.

§ 17. The teacher to be paid at the same rate, after the period of his engagement, until the trustees shall have paid his whole salary: in case of any difference between the trustees and a teacher, in regard to salary, the same to be settled by arbitration, as provided.

## Common Schools.

### *Duties of Township Councils.*

#### § 18. Their duties to be :

1. To levy assessments for common school purposes as desired by trustees ; with power, if deemed expedient, to grant to trustees authority to borrow money for school purposes, and cause to be levied assessment sufficient to pay principal and interest in ten years. 2. To levy a sufficient sum for the site, erection and support of a township model school and library. Members of the township councils to be trustees of such model schools ; and common schools may, with consent of trustees and council, be merged into such model school ; tuition therein to student teachers to be free. 3. To form new school sections where none before established. 4. To unite school sections under certain conditions : any such alteration not to take effect before the 25th December afterwards : all parties concerned to be previously notified of such intended alteration. Union school sections of parts of two or more townships may be formed by the reeves and local superintendents at a meeting appointed by any two of such reeves : other parties to be duly notified : each union school section to be deemed one school section, and in respect to superintendence and taxing for the school-house, as belonging to the township where the school-house is situated. 5. Township clerk to furnish the local superintendent with a copy of the proceedings of such council relative to the formation or alteration of school sections.

§ 19. Township council or board of trustees, on the application of twelve or more resident heads of families, to establish separate schools for Protestants, Roman Catholics, or coloured people : coloured people *only* allowed to vote for the election of trustees of the separate school for their children ; and petitioners only for a separate Protestant or Roman Catholic school to vote at the election of trustees of such school : school monies to be apportioned according to the average attendance of pupils. § 20. All the school sections in a township may, at the request of a majority of resident householders of the several school sections, by a by-law of the township, be conducted under one system, and one management, like the schools in cities and towns, and be managed by one board of trustees—one to be chosen in and for each ward, if township divided into wards, otherwise the whole chosen in and for the whole township, and invested with the same powers, &c., as mentioned in the 24th section of this act.

### *Councils and Trustees in Cities, Towns, and Incorporated Villages, and their Duties.*

§ 21. The council, or common council of such city or incorporated town shall be invested within its limits, and be subject to the same regulations, as are the municipal council of each county and township by the 18th and 27th sections of this act : Provided that the appointment of local superintendents for such city or town be made by the board of trustees for the same.

§ 22. The council, or common council of such city or incorporated town shall be invested within its limits, and be subject to the same regulations, as are the municipal council of each county and township by the 18th and 27th sections of this act : Provided that the appointment of local superintendents for such city or town be made by the board of trustees for the same.



§ 22. Two trustees to be elected in each ward of cities and towns by a majority of the taxable inhabitants—to retire in succession annually, as provided. § 23. On the *second* Wednesday in January each year one fit person to be elected trustee in each ward, and to continue in office for *two* years. § 24. The board of school trustees to be incorporated under the name of *The Board of School Trustees of the city (or town) of—, in the county of—*. Duties of such board to be :

1. To appoint annually, or oftener, a chairman, secretary, superintendent of schools, and one or more collectors of school rates, and to appoint times and places of meetings, &c. 2. To manage and dispose of school property and school monies. 3. To provide for school premises, books and libraries. 4. To determine the sites and number of schools, teachers to be employed, the terms, and amount of remuneration and duties, superintendent's salary and duties, and to adopt measures for uniting common schools with the grammar school. 5. To appoint annually or oftener a committee of not more than *three* persons, for the charge and oversight of each school. 6. To lay estimates before the municipal councils of the sums required for teachers' salaries, and other school purposes. 7. To levy at their discretion any rates upon the parents or guardians of pupils, and by the same means as trustees of common schools may do under the 12th section of this act. 8. To give orders for payment of teachers and other school officers, upon the chamberlain or treasurer of such city or town. 9. To call annual and special school meetings of the taxable inhabitants, as prescribed in the 12th section of this act. 10. To see that the pupils are supplied with authorised text books, and to appoint a librarian. 11. To see that the schools are conducted according to law, and to publish an annual report in one or more papers of their proceedings, and the progress and state of the schools, receipts and expenditures of school monies; and to transmit report annually, before the 15th January, to the chief superintendent, as required by the 12th section of this act.

§ 25. Village municipalities to exercise all such powers as are conferred by this act upon city corporations: Provided, that on the *second* Wednesday in January 1851, a meeting shall be held in each such incorporated village, to be organized and conducted in the same manner as prescribed by the 23rd section of this act, for the election of *six* fit and proper persons, resident freeholders or householders, as school trustees, to be divided into *three* classes, numbered 1, 2, 3—the *first* class to hold office one year, the *second* two years, the *third* three years—such trustees retiring to be eligible for re-election: Provided, secondly, that there be an annual school meeting in such incorporated villages, for the election of *two* trustees in the place of those retiring. The first meeting to be called by the town-reeve, giving *six* days' notice thereof. § 26. The trustees elected under the preceding section to succeed to all the powers and

liabilities of the present trustees, and to be incorporated under the title of "*The Board of School Trustees of the incorporated village of —, in the county of —*", and to possess all the powers so conferred by the 24th section of this act upon the trustees of cities and towns.

### *Duties of County Municipal Council.*

§ 27. The duties of such council shall be :

1. To raise by assessment upon the several townships such amount, for the payment of common school teachers' salaries, as shall be equal to the school money apportioned to the several townships by the chief superintendent; to be increased at the discretion of such council, for the purposes stated: assessments to be collected and paid to the county treasurer on or before the 14th December; and in case of non-payment, the teacher may be paid by order of superintendent on the county treasurer, in anticipation of such county school assessment; and the county shall make provision accordingly. 2. To raise money for the establishment and maintenance of a county common school library. 3. To appoint a local superintendent for the whole county, or for any one or more townships: to fix one within the limits of the 30th section of this act, and provide for superintendent's salaries: no such local superintendent to have the oversight of more than two schools: the county clerk to notify chief superintendent of the appointment of local superintendent, and county treasurer, and furnish copies of proceedings in council relative to school matters. 4. To see that sufficient security be given by officers entrusted with school monies: that no deduction be made from the school fund by the county treasurer for the receipt and payment of school monies: to appoint *sub-treasurers* (if expedient) for one or more townships, who shall be subject to the same obligations as by this act imposed upon the county treasurer. 5. To appoint auditors of school accounts, who are to report thereon to the council; and an abstract of such report to be transmitted annually by the county clerk, on or before the 1st day of March, to the chief superintendent.

### *Constitution and Duties of the County Boards of Public Instruction.*

§ 28. Trustees of the county grammar school and local superintendents to constitute a county board of public instruction. If more than one grammar school in such county, then such county to be divided into as many circuits as grammar schools; and the trustees of each county grammar school and the local superintendents of schools in each circuit shall be a board of public instruction for such circuit: not less than *three* members to constitute a *quorum* for examining and granting certificates to common school teachers; and not less than *five* to be a quorum for other business. Board expences to be provided for by the county council.

§ 29. Duties of the county board of instruction :

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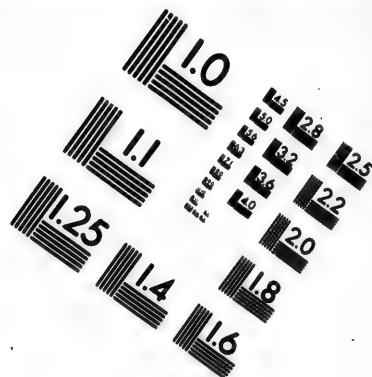
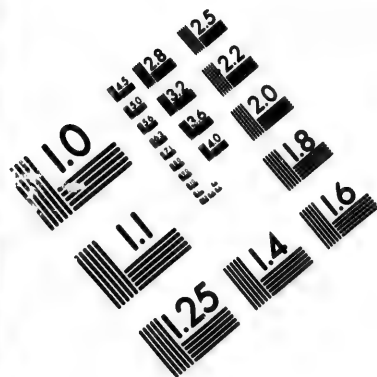
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1. To meet not less than four times a year. 2. To examine and give certificates to common school teachers, arranging them into three classes, according to their attainments and abilities: to annul certificates: teachers to furnish satisfactory proof of good moral character, and to be natural born or naturalised subjects, and take the oath of allegiance before a justice of the peace. 3. To select (if deemed expedient) text books for the county or circuit schools. 4. To promote the establishment of libraries.

### *Duties of local Superintendents of Schools.*

§ 30. Each entitled to not less than £1 currency per school under his charge, together with any additional county allowance; to be paid quarterly by the county treasurer. § 31. Local superintendent's duties to be—

1. To apportion the common school fund among the several sections according to the ratio of attendance, unless otherwise directed. 2. To give to qualified teachers, and no others, on the order of the trustees, a cheque on the county treasurer, for any money apportioned and due to such section; such orders not to be paid unless a satisfactory report shall have been received from such section for the year ending December preceding; nor unless it shall appear that a school has been kept in such section for at least *six* months of the year preceding such report: *new* school sections excepted. 3. To visit common schools at least once in each quarter, to examine into the state of the school, and give such advice as he shall judge proper. 4. To deliver in each school section a *public lecture* on practical education once a year, and to stimulate parents and guardians to improve the schools and secure sound education. 5. To see that the schools are conducted according to law; to prevent the use of unauthorized books. 6. To attend the meetings of the county board: to meet and confer with the chief superintendent on his official visits. 7. To attend arbitrations, and to meet the town reeves, as provided by the 12 & 18 Vic., and to decide upon any other questions of difference submitted to him; with an appeal from his decision to the chief superintendent. 8. To suspend teacher's certificate when necessary until the next meeting of the county board, who shall dispose of the matter. 9. To act in accordance with regulations and instructions according to law: to give any information in his power to the chief superintendent respecting school matters: to furnish county auditors when required with the trustees' orders as the authority for his *cheques* for school monies: to deliver copies of his official correspondence and all school papers in his possession to the order of the council, on retiring from office. 10. To prepare and transmit an annual report to the chief superintendent, stating—1st. The number of schools and sections under his jurisdiction. 2nd. The number of pupils taught therein, and their ages: the whole number of children residing in each section over the age of *five* and under *sixteen*. 3rd. The time each school has been kept open: the branches taught: number of pupils in each branch, and the books used: the average attendance of scholars, male and female, summer and winter. 4th. The amount of monies received and expended: annual salaries of teachers.



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5th. The number of his school visits and lectures: number of school-houses, &c. 6th. The number of qualified teachers, private schools, libraries; and any other information on educational matters.

*School Visitors and their Duties.*

§ 32. Clergymen of all denominations, judges, members of the legislature, magistrates, members of county councils and aldermen, to be school visitors within their respective localities. § 33. School visitors authorised to visit the schools, attend examinations, examine into the state and progress of the schools, and give advice as they may think proper. A general meeting of visitors may be convened by any two visitors, to provide for the efficient visitation of schools, &c.

*Duties of the Chief Superintendent of Schools.*

§ 34. To be appointed by the Governor; his salary the same as now or may be hereafter provided by law, and to be responsible to and subject to the directions of the Governor General; to account for the contingent expenses of his office; allowed two clerks, with same salaries as in Lower Canada. § 35. His duties to be—

1. To apportion legislative grants to the several counties and localities, according to the ratio of population. 2. To certify such apportionment to the Inspector General and county clerks, &c. 3. To prepare suitable forms for reports and proceedings under this act, and transmit the same to the proper officers. 4. To print and distribute from time to time printed copies of this act, with the necessary forms and regulations, to officers of common schools. 5. To see that the monies apportioned be properly applied: to decide on all matters of complaint submitted to him involving expenditure. 6. To appoint a deputy and special inspectors (without salary). 7. To superintend the Normal School. 8. To promote the establishment of libraries, provide plans of school-houses, and collect and diffuse useful information on the subject of education. 9. To submit to the Council of Public Instruction, books, manuscripts, &c., designed as text or library books; and to prepare and lay before such council general regulations, &c. 10. To apportion grants for school libraries. 11. To appoint proper persons to conduct county teachers' institutes, and furnish rules and instructions. 12. To be responsible for monies paid through him for normal and model schools, and to give security therefor: and to prepare and transmit correspondence directed by the Council. 13. To make an annual report on or before the 1st July to the Governor, of the actual state of the normal, model and common schools, and finances, with suggestions for improvement.

*Constitution and Duties of the Council of Public Instruction.*

§ 36. The Governor to appoint not more than nine persons (the chief superintendent to be one) to be the Council of Public Instruction for Upper Canada, to hold office during pleasure.

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§ 37. The chief superintendent to provide a place of meeting, to call the first meeting, and a special meeting at any time. The expenses of the council to be accounted for as contingent expenses of the Education Office. The senior clerk in Education Office to be recording clerk of the council. § 38. Three members to constitute a quorum, and their duties to be—

1. To appoint a chairman and times of meeting. 2. To adopt all needful measures for establishment of the Normal School, containing one or more model schools. 3. To make rules and regulations for the government of such Normal School; to select the location, and erect buildings; to determine the number and compensation of teachers, &c. 4. To make rules for the government of common schools and school libraries. 5th. To examine and recommend, or disapprove of text books and library books. 6. To transmit annual account to the Governor, of the Normal School expenditure.

*Miscellaneous Provisions.*

§ 39. A sum not exceeding £1500 per annum to be allowed out of the legislative grant for the contingent expenses of the Normal School, and a sum not exceeding £1000 per annum for the attendance of teachers in training. § 40. The money appointed by the chief superintendent, and that raised by assessment, to constitute the common school fund of the locality, and shall be duly expended. But no locality shall be entitled to a share of the legislative grant, without raising an equal sum by assessment, clear of expenses; and in case of deficiency in such assessment, the public grant to diminish in proportion.

§ 41. The Governor in council authorized to appropriate annually out of the public grant a sum not exceeding £3000 for school libraries; £25 in any county or riding for a teachers' institute, and £200 per annum for plans and publications for the improvement of school architecture and practical science. § 42. The monies apportioned to be payable on or before the 1st July, annually, to the treasurer of the county, &c. § 43.

In case of loss or embezzlement of school funds, and insufficient security taken, the person who ought to have exacted such security to be held responsible. Any secretary-treasurer, wrongfully withholding or refusing to deliver up, or to account for and pay over, books, papers, chattels or monies, when directed, shall be guilty of a *misdemeanor*; and upon the application of a majority of the trustees (supported by affidavit of such wrongful withholding, or refusal made before a justice of the peace) to the judge of the county court, such judge shall thereupon order the parties to appear before him, and on proof of service, such judge may, in a summary manner,

whether the defendant do or do not appear, hear the complaint, and if well founded, order the defendant to deliver up, account

for and pay over, the books, papers, chattels or monies aforesaid, by a certain day to be named by him, with costs to be taxed by the judge; and in case of default, then to order the defendant to be arrested by the sheriff and committed to the common gaol of the county without bail or main-prize, until the books, papers, &c., be delivered up or paid over. § 44. Chief superintendent authorized, upon the recommendation of Normal School teachers, to give certificates of qualification to any teacher of a common school, which shall be valid throughout Upper Canada. § 45. Salaries of chief local superintendents and other persons employed, or expenses incurred in the execution of this act, not to be paid out of the common school fund, which shall wholly be expended in teachers' salaries. § 46. Any person wilfully disturbing, interrupting, or disquieting the proceedings of any school meeting or school, under this act, shall for each offence forfeit to the school section, for school purposes, a sum not exceeding £5, upon conviction before any justice of the peace, on the oath of one credible witness other than the prosecutor; and if not forthwith paid, may be levied with costs by distress and sale of the offender's goods, by warrant of such justice: or such offender may be indicted and punished for the same as a misdemeanor. § 47. The first election of trustees to take place as provided for by this section.

### COMMON SCOLD.

A Common Scold, *communis rixatrix*, (for our law-Latin, says *Blackstone*, confines it to the feminine gender) is a troublesome, angry woman, who, by her brawling and wrangling amongst her neighbours, breaks the public peace; increases discord; and becomes a public nuisance to the neighbourhood: she is, therefore, liable to be indicted as a nuisance, and, on conviction, to undergo the punishment of the tre-bucket, or ducking-stool.—4 *Bl. Com.* 168.

### COMPOUNDING FELONY,

Is a misdemeanor at common law called *Theftbote*—which is, where the party robbed not only knows the felon, but also takes his goods again, or other amends, upon agreement not to prosecute. This is frequently called *compounding of felony*, and formerly was held to make a man an accessory, but is now punished only with fine and imprisonment.—4 *Bl. Com.* p. 133, 16 *Ed.*; 1 *Haw. c.* 59, § 8.

By 4 & 5 V., c. 25, § 50, every person who shall corruptly take any money or reward, directly or indirectly, under pretence of helping any person to any stolen property whatsoever, shall (unless he cause the offender to be apprehended and brought

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to trial for the same) be guilty of felony, and, upon conviction, be liable, at the discretion of the court, to be imprisoned at hard labour in the provincial penitentiary for not less than seven years, or to be imprisoned in any other place of confinement for any term not exceeding two years. § 51. If any person shall publicly advertise a reward for the return of any property stolen or lost, and shall in such advertisement use any words purporting that no question will be asked; or shall make use of any words, in any public advertisement, purporting that a reward will be given or paid for any property stolen or lost, without seizing or making any inquiry after the person producing the same, or shall promise or offer, in any such public advertisement, to return to any pawnbroker or other person, who may have bought or advanced money by way of loan upon any property stolen or lost the money so paid or advanced, or any other sum of money or reward for the return of such property; or if any person shall print or publish any such advertisement, in any of the above cases, every such person shall forfeit the sum of £20 for every offence, to any person who will sue for the same by action of debt, to be recovered with full costs of suit.

## *Indictment for compounding a Felony.—(Archbold.)*

County of —, } The jurors for our lady the Queen, upon their oath  
to wit, } present, that heretofore, to wit, on the — day of  
— in the — year of the reign of our sovereign lady Victoria, at the  
township of — in the county of —, one A. wife of J. N. feloniously  
stole, took, and carried away, one silver spoon of the value of twenty  
shillings, of the goods and chattels of one J. S., against the peace of our  
lady the Queen, her crown and dignity. And that the said J. S. late  
of the township aforesaid, in the county aforesaid, labourer, well knowing  
the said felony to have been by the said A. so as aforesaid done and  
committed; but contriving and intending unlawfully and unjustly to  
prevent the due course of law and justice in that behalf, and to cause  
and procure the said A. for the felony aforesaid, to escape with impunity;  
afterwards, to wit, on the day and year aforesaid, at the township aforesaid,  
in the county aforesaid, unlawfully, and for wicked gain's sake,  
did compound the said felony with the said J. N. the husband of the  
said A. and then and there did exact, take, receive and have of the  
said J. N. the sum of twenty-six shillings, for and as a reward for com-  
pounding the said felony, and desisting from all further prosecution  
against the said A. for the felony aforesaid; and that the said J. S. on  
the day and year aforesaid, at the township aforesaid, in the county  
aforesaid, did thereupon desist, and from that time hitherto hath desisted  
from all further prosecution of the said A. for the felony aforesaid, to  
the great hindrance of justice, in contempt of our lady the Queen and  
her laws, and against the peace of our lady the Queen, her crown and  
dignity.

**COMPOUNDING OTHER OFFENCES.**

The compounding of informations on penal statutes, is a misdemeanor against public justice, by contributing to make the laws odious to the people.—4 *Bl. Com.* 136. Therefore, in order to discourage malicious informers, and to provide that offences, when once discovered, shall be duly prosecuted, it is enacted by the statute 18 Eliz. c. 5, § 4; that if any informer, by colour or pretence of process, or without process, upon colour or pretence of any manner of offence against any penal law, make any composition, or take any money, reward, or promise of reward, without the order or consent of the court, he shall stand two hours in the pillory; be for ever disabled to sue on any popular or penal statute, and shall forfeit £10. This severe statute extends even to penal actions, where the whole penalty is given to the prosecutor.—4 *Bl. Com.* 136, *note* (a.) But it does not apply to penalties which are only recoverable by information before justices; and an indictment for making a composition in such a case, was holden bad in arrest of judgment.—*Rex v. Crisp and others*, 1 *B. & A.* 282.

It has been decided that a party is liable to the punishment prescribed by the 18 Eliz., c. 5, for taking the penalty imposed by a penal statute, though there was no action or proceeding for the penalty.—*Rex v. Gotley, East. T., 1805, Russ. & Ry.* 84.

**CONCEALING BIRTH.**

By 4 & 5 V., c. 27, § 14, if any woman shall be delivered of a child, and shall, by secret burying or otherwise disposing of the dead body of the said child, endeavour to conceal the birth thereof, every such offender shall be guilty of a *misdemeanor*, and being convicted thereof, shall be liable to be imprisoned for any term not exceeding two years; and it shall not be necessary to prove whether the child died before or at its birth: Provided, always, that if any woman tried for the murder of her child, shall be acquitted thereof, it shall be lawful for the jury by whose verdict she shall be acquitted, to find, in case it shall so appear in evidence, that she was delivered of a child, and that she did, by secret burying or otherwise disposing of the dead body of such child, endeavour to conceal the birth thereof; and thereupon the court may pass such sentence as if she had been convicted upon an indictment for the concealment of the birth.

See also *post* title "Punishment," § 36.

**CONFESSION.**

If a party, on examination before a justice, confess a crime, it may be given in evidence against him, but not against others—

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2 *Haw. c. 46, § 3*; and it is sufficient, though there is no other proof of his having committed the offence, or of the offence having been committed, if such confession was in consequence of a charge against him—*Rex v. Eldridge, Russ. and Ry. c. c. R. 440*; but it must be voluntary, and not have been obtained by any promise, favour, menace or terror. The admissibility of a confession must depend upon circumstances—*Phil. Ev. 104*; and the identity of the examination must be proved before it can be read in evidence—*Sum. 263*; it must be in writing, and not orally, and must be taken altogether and not by parcels—2 *Haw. c. 46, § 5*; *Leach, 286*; and such examination should not be on oath—*Bull. N. P. 242*. Persons confessing themselves, and on that confession adjudged guilty of felony, cannot be admitted to bail—as the only reason for admitting to bail in felony, is where the crime is doubtful—2 *Haw. c. 15, § 40*. The confession must be in the very words used by the party, and not in the language of another, from recollection—*Rex v. Sexton, 1 Burn, 392*. Prisoner may be convicted on the uncorroborated evidence of his own confession—*Leach, 287*.

See post "Examination."

## CONSPIRACY

Is a combination of two or more persons to injure a third person—1 *Haw. c. 72, § 2*; or to injure or prejudice the community—8 *Mod. 11, 320*; 3 *M. & S. 67*: thus, where the defendants were charged with conspiracy in causing a man to be convicted and executed for robbery, which they knew he was innocent of, with intent to obtain the reward then given by act of parliament—*R. v. Macdaniel, 1 Leach, 45*; *Fost. 130*: so, where the defendants were indicted for conspiring to accuse another of taking hair out of a bag, without alleging that it was done feloniously, *Lord Mansfield* held, that the gist of the offence was the unlawfully conspiring to do an injury to another by a false charge; and that whether the conspiracy be to charge a man with criminal acts, or each only as affect his reputation, it is sufficient—*R. v. Bishop, 1 Bl. Rep. 368*; 3 *Burr, 1320*: so, where the prosecution is for the sole purpose of extorting money—*R. v. Hollingbury, 4 B. & C. 329*: so also, a conspiracy to prevent a prosecution for a felony, is as much an offence as a conspiracy to institute a false prosecution—14 *Ves. 65*; and a conspiracy of two magistrates to prevent the course of justice, on an indictment for not repairing a highway, by signing a false certificate of the highway being in repair, in order to prevent the court from imposing a fine on the defendants, has been also held to be an indictable offence—*R. v. Mawley, 3 T. R. 618*. Among various other subjects of conspiracy may be mentioned



a conspiracy to obtain, by procuring in return, the appointment to a public office—*R. v. Pollman*, 2 Camp. 229; of several defendants to injure a man in his trade—*R. v. Eccles*, 1 Leach, 274; to sell unwholesome wine or provisions—*R. v. Macarty*, and *Fordenburgh*, 2 Ld. R. 1179; journeymen combining not to work unless for certain wages—*R. v. Journeymen Tailors of Cambridge*, 8 Mod. 10; to suppress a will—*Breerton's case*, *Noy*, 103; or to cause an illiterate person to execute a deed to his prejudice, by reading it over falsely to him.—*R. v. Skirret*, 1 Sid. 312, 431.

If all the defendants who are indicted for a conspiracy be acquitted but one, the acquittal of the rest is the acquittal of that one also, as there must be *two* concerned in the conspiracy—*Cro. Cir. Com.* 159; 2 Ld. Ray. 1167; 2 Burr. 993; but an indictment against one person and others unknown, is maintainable.—3 Chit. c. 4, §141.

The offence of conspiracy may be tried by justices of the peace in their quarter sessions—*R. v. Rispu*, 3 Burr. 1320; and the act of one party, in pursuance of the common object, is evidence in law against all the parties.—*Ph. on Ev.* 76. If one only of two persons indicted appear, he may be tried in the absence of the other defendant.—*R. v. Kinnerley*, 1 Str. 193. The punishment for a conspiracy is by pillory (a), fine and imprisonment, and sureties for the good behaviour.—2 Burr. 1027.

See post title "Workmen."

#### Indictment for Conspiracy. (Chitty.)

County of —, } The jurors for our lady the Queen, upon their oath  
to wit. } present, that A. B., late of —, in the county of  
—, yeoman, C. D., late of —, in the said county, yeoman, and  
E. F., late of —, in the same county, labourer, being persons of evil  
minds and dispositions, on the — day of —, in the — year of  
the reign of our sovereign lady Victoria, with force and arms, at the  
township aforesaid, in the county aforesaid, unlawfully and wickedly  
(or, if the conspiracy be malicious, say "falsely and maliciously") did  
conspire, combine, confederate and agree together, to (here state the  
object of the conspiracy) and the jurors aforesaid, upon their oath afore-  
said, do further present, that the said A. B., &c. in pursuance of, and  
according to the said conspiracy, combination, confederacy and agree-  
ment, between them, the said A. B., &c. as aforesaid had, did, on &c.,  
at &c. (the place where the overt act took place) (here set out the overt  
acts of conspiracy) to the great damage of, &c. (the party immediately  
injured) to the evil example of all others, and against the peace of our  
said lady the Queen, her crown and dignity (add a second count, stop-  
ping at the statement of the conspiracy, omitting the overt acts, and  
concluding as above.)

(a) Pillory is now abolished by the 4 & 5 V. c. 24, § 21.

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## CONSTABLE.

*Who are liable to serve the Office.*

No person can be appointed a constable who is not an *inhabitant* of the place where he is to serve—1 *Burn.* 703; *R. v. Adbard*, 4 *B. & C.* 772: and if a very poor and ignorant person be chosen, he may by law be discharged, and an abler person appointed in his room.—*Ibid.*; *Dalt.* c. 28.

Barristers at law, attornies, and other officers of the Court of King's Bench, are exempt from serving the office—2 *Keb.* 506; *Cro. Car.* 389; 2 *Haw.* c. 10, § 39: and by the ancient custom of the realm, surgeons have been allowed the like privilege.

An *officer in the King's service*, or a *gentleman of quality*, may perhaps be relieved from serving such office, upon application to the Court of King's Bench, provided there are other persons sufficient to execute the office.—2 *Haw.* c. 10, § 41.

It hath been holden that the King may exempt any person, if the exemption be not extended so far as to prevent the *existence* of the office in any particular place.—*Rex v. Clarke*, 1 *T. R.* 682. By 10 & 11 *W. III.* c. 23, § 2, 3, the prosecutor of a felon to conviction is discharged from liability to serve as constable. A *foreigner*, though naturalized, is not liable to serve.—*Rex v. De Mierre, Burr*, 278. No man that *keeps a public house* ought to be made a constable, if there are other persons in the parish proper to serve.—*Per Holt, C. J.* 6 *Mod.* 42.

*How appointed, and how punishable for refusal to serve.*

\*By 33 *G. III.* c. 2, § 10, it is enacted, that it shall be lawful for justices of the peace, within the respective limits of their commissions, at their general quarter sessions in April, or the greater part of them, to nominate and appoint, yearly, a sufficient, discreet and proper person, to serve the office of high constable, in each and every district; and also to nominate and appoint such a sufficient number of persons as in their discretion will be necessary to serve the office of constable, in each and every parish, township, reputed township or place; and the said constable and constables, before they enter into their office, shall severally take the following oath, to be administered by any justice of the peace (a):

You shall well and truly serve our sovereign lord the King, in the office of —, for the — of —, for the year ensuing, according to the best of your skill and knowledge. So help you God.

And after such service, such person shall be exempt from any of the offices mentioned in this act, for three years.

(a) The whole of the 33 *G. III.* c. 2, excepting the 10th clause, has been repealed by the 46 *W. IV.* c. 2.

By 13 & 14 Car. II. c. 12, § 15, if a constable die, or go out of the parish, any two justices may make and swear a new one till the next quarter sessions, which shall either approve or appoint another.

If a constable, being duly appointed, refuse to take the oath, he may be indicted at the assizes or sessions, when, if found guilty, he may be fined, and in default of payment, he may be committed—*Rex v. Lane*, 2 Str. 920; but if he has once been allowed to appoint a deputy, who is approved of, he is altogether discharged—3 Esp. Rep.; but such deputy must be duly sworn—*Wood's Inst.* 61, c. 7.

#### *Powers and duties of the Office.*

The high constable has the superintendence and direction of all petty constables within his district, and he is, in a manner, responsible for their conduct, since he is bound to notice and present their defaults, for the neglect of which duty he is in fact presentable himself.

Every high and petty constable is, by the common law, a conservator of the peace—2 How. c. 8, § 6; therefore, he is authorised, without any warrant, to arrest all traitors, felons, and suspicious persons, and all those whom he shall see upon the point of committing treason or felony, or doing any act which would manifestly endanger life.—2 How. c. 12, § 19; 1 Bac. Ab. 441. In case of any breach of the peace committed, or one about to be committed, in the presence of a constable—as where violent threats or attempts are used by any person to beat or hurt another—the constable may arrest the party and carry him before a magistrate, or detain him till he can conveniently do so.—*Dalt.* c. 1, 116, § 3. A constable has no power to execute a warrant out of the jurisdiction of the justice who grants it.—*Milton v. Green*, 5 East. 223—unless backed by a magistrate of the district in which the offender is found.—24 G. II. c. 55. It is said, however, that a constable is not obliged to execute a warrant out of his district.—*v. Norman*, 1 Ld. R. 736. A constable cannot imprison a person arrested by him for any longer time than till he can conveniently bring him before a magistrate.—*Sax.* 98; *H.* 82; 4 Com. Dig. *Leet*, (M. 9). A constable (after giving notice that he is one) may break open the doors of a house to arrest a felon, if he be concealed therein, and peaceable entrance is denied.—2 H. P. C. 80, 82; and if the felon resists or flies, it is not murder if the constable kill him (e). He may commit affrayers to the stocks on his own view—but not if absent—*Dalt.* c. 1, *Cro. Eliz.* 375, 376; he may imprison to prevent a felony.—*Moors*, 284; and if one be

(a) *Quinn*—Whether it must not be a case of extreme necessity to justify this.

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menaced, he may compel the menacer to find surety, or commit him to prison till he does—4 *Inst.* 266, *Cro. Eliz.* 575-6; he may break open a house, when entrance is denied, to abate an affray, or to suppress disorderly drinking, or noise, at an unreasonable hour of the night—*Hale, P. C.* 95; he may imprison one who insults or assaults himself, or opposes him, though verbally, in the execution of his office, and may beat another in his own defence—*Crompt. J. P.* 131; if a warrant be directed generally, "to bring before me, or some other justice," he may carry the prisoner before what justice he chooses, in the district—but not if specially directed—5 *Rep.* 596; he has no right to handcuff a prisoner except he has attempted to escape, or that it is necessary in order to prevent an escape—3 *Ma. Ca.* 399; he should seize the goods of felons who fly the country, for the King's use—*Crompt. J. P.* 201; he is to aid and assist in the appraisement and sale of goods distrained for rent, and may swear the appraisers—2 *W. & M. sess.* 1, c. 5; he is also to aid landlords in seizing, as a distress for rent, goods fraudulently removed to avoid such distress, and may break open a house wherein they are deposited—(oath being first made before a justice, of reasonable suspicion of their being there).—11 *G. II. c.* 19. Constables may seize a stranger guilty of profane cursing and swearing, and carry him before a justice; but if known, he must lay an information.—19 *G. II. c.* 21, § 3. When on a warrant indorsed he apprehends an offender, he is to carry him before the justice who indorsed it; and if the offender find bail, he is to receive the recognizances, examination, &c. and deliver them to the clerk of assize, or clerk of the peace of the district where such offender is required to appear; and if the offender is not bailed, he is to carry him before a justice of the county where the offence was committed.—24 *G. II. c.* 55. A constable making a distress under a justice's warrant, shall, on demand, shew the same to the party, and permit a copy to be taken.—27 *G. II. c.* 30. But if a constable be duly sworn, and commonly known to be an officer, and act within his own precinct, he need not show the party his warrant, though he should demand it; but he ought to acquaint the party with the substance of it.—3 *Haw. c.* 16; 1 *East. P. C.* 315. He is not discharged from his office until his successor be sworn.—13 *Mod.* 255.

As the office of a constable is wholly ministerial, he may appoint a deputy to execute a warrant directed to him, when by reason of sickness, absence, or otherwise, he cannot do it himself.—3 *Haw.*, c. 10, § 38. And such a deputy may be appointed by parol, and need not be sworn.—*Medhurst v. Wate*, 3 *Barr.* 1959. But unless the deputy is duly allowed and

sworn, the constable is answerable for him in case of any misconduct.—*Wood's Inst. b. 1, c. 7*;—though, if duly sworn, the liability of the principal is at an end.—*Underhill v. Witte, 3 Esp. 56.*

### Indemnity and Protection.

An action against a constable for any act done in the execution of his office must be brought in the district where the offence was committed, to which action he may plead the general issue, and give the special matter in evidence; and if he recover he shall have double costs—*21 Jac. I., c. 12.* This extends also to his deputy.—*Crompt. J. P. 201.* And every man aiding a constable in the execution of his office, has by law the same protection as the constable.—*2 Hale, P. C. 97.* A justice's warrant is a good justification of a constable, in any matter within the jurisdiction of such justice, but not otherwise.—*Str. 711.*

By stat. 24 G. II., c. 44, the constable is not answerable for the execution of a warrant, in case the magistrate who made it has no jurisdiction, if he complies with the requisitions of that statute: and by § 2, no action shall be brought against him or any person acting by his order and in his aid, for anything done in obedience to a warrant under the hand or seal of a justice, until demand in writing hath been made, or left at his usual place of abode, of the perusal and copy of the warrant, and the same hath been refused or neglected for six days after such demand; and if, after compliance therewith, any action shall be brought without making the justice a defendant, the jury shall, on production of the warrant, give their verdict for the defendant, notwithstanding any defect of jurisdiction in the justice. If the action be brought jointly against the justice and constable, the jury shall, on proof of the warrant, find for the constable, notwithstanding such defect of jurisdiction. By § 3, no action shall be brought against any constable acting in the execution of his office, unless commenced within six calendar months after the act committed.

If a constable acting under a distress warrant, seize the goods of A. mistaking them for the goods of B. he is entitled to the protection of the statute.—*Carlton v. Williams, 3 B. & A. 330.* A constable who arrests a person given him in charge, is not liable to an action for false imprisonment, though the charge be ill founded, unless he make himself a party in oppressing the person so arrested, knowing the charge to be false.—*White v. Taylor, 4 Esp. 80.*

### Of his Punishment.

He may be fined or imprisoned, or both, for refusing to serve

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the office when appointed.—*Arch. C. P.* 354. He is indictable for neglecting his duty, either at common law or by statute.—*1 Salk.* 381. And may be fined for not endeavouring to pacify an affray in his presence.—*Crompt. J. P.* 130. If he will not return his warrant, or what he has done under it (for he ought to keep the warrant for his own justification) the sessions may fine him.—*6 Mod.* 83. He is guilty of felony if he lets a felon out of the stocks.—*1 Hale, P. C.* 586. He may be removed for just cause by the authority which appointed him.—*Bulst.* 174.

SPECIAL CONSTABLES.

By stat. 10 & 11 V., c. 12, it is enacted, that where it shall be made to appear to any two or more justices of the peace, upon the oath of any one credible witness, that any tumult, riot, or felony has taken place, or is continuing, or may be reasonably apprehended, within the jurisdiction of such justices, and such justices shall be of opinion that the ordinary officers of the peace are not sufficient for the preservation of the peace and for the protection of the inhabitants and property, such justices may, by precept or writing under their hands, nominate and appoint so many as they shall think fit of the householders or other persons (not exempt from serving the office of constable) residing in such parish, township, or place, or in the neighbourhood thereof, to act as special constables for such time and in such manner as to the said justices shall seem fit, for the preservation of the peace and protection of property; and such justices, or any one of them, or any other justice acting for the same limit, may administer to any person so appointed the following oath:—

I A. B. do swear that I will well and truly serve our sovereign lady, the Queen, in the office of special constable, for the — of — without favour or affection, malice or ill will; and that I will, to the best of my power, cause the peace to be kept and preserved, and will prevent all offences against the persons and properties of her Majesty's subjects, and that while I continue to hold the said office I will, to the best of my skill and knowledge, discharge all the duties thereof faithfully according to law. So help me God.

Notice of such appointment to be transmitted by such justices to the Secretary of the province. § 2. Such Justices, or any two of them, or the justices for the limit, or the major part of such last mentioned justices, at a special session may, from time to time, make orders and regulations for rendering such special constables more efficient, and shall have power to remove any of them. § 3. Every such special constable shall have, throughout the entire jurisdiction of the appointing justices, all such powers, &c., as any constable duly appointed



by law. § 4. Under special circumstances, any two or more justices may authorise such special constables to act in an adjoining district. § 5. Any special constable so appointed refusing to be sworn when required by any two justices of the limit, may be convicted thereof before such justices, and shall forfeit and pay such sum, not exceeding £5, as to said justices shall seem meet; and if any special constable shall neglect or refuse to appear when summoned for the purpose of taking the oath, he shall be liable, on conviction before any two justices of the limit, to pay such sum, not exceeding £5, as to them shall seem meet, unless he shall prove to their satisfaction that he was prevented by sickness or other sufficient excuse. § 6. The like penalty is also imposed on neglect or refusal to serve or obey lawful orders and directions. § 7. Justices at a special session may also suspend or determine the service of all or any of such special constables; and notice thereof shall be forthwith transmitted to the Secretary of the province. § 8. Special constables shall, within one week after their discharge, deliver over to their successors (or such other persons as any justice for the limit may direct) every staff, weapon, and other article provided under this act, under a penalty not exceeding £2, upon conviction before two justices. § 9. Any person assaulting or resisting any special constable while in the execution of his office, or encouraging any other person so to do, shall, on conviction before two justices, forfeit and pay any sum, not exceeding £10, or shall be liable to such other punishment as by law established. § 10. Justices at a special sessions may order reasonable allowance to special constables, not exceeding 5s. a-day, by order upon the district treasurer. § 11. Special sessions under this act may be adjourned from time to time. § 12. Prosecutions under this act to be commenced within two calendar months after the offence; and penalties paid to the district treasurer, or other municipal division within which the offence was committed; and inhabitants may be competent witnesses. § 13. Convicting justices may adjudge offenders to pay immediately, or within a certain time; and in case of non-payment penalties may be levied by distress and sale of the offender's goods, with reasonable charge of distress; and for want of sufficient distress such offender shall be imprisoned in the common goal for any term not exceeding one calendar month, when fine does not exceed £5, and not exceeding two calendar months in any other case. § 14. Conviction to be in the following form:—

County of ——— } Be it remembered, that on the ——— day of ——— in  
to wit. } the year of our Lord ——— in the ——— of ———  
the County of ——— J. N. is convicted before us A. B. and C. D., two

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of her Majesty's justices of the peace for the said county of — for that he the said J. N. (*here specify the offence and the time and place when and where the same was committed, as the case may be*) and we do adjudge that the said J. N. shall for the said offence forfeit the sum of —, and shall pay the same immediately, (*or shall pay the same on or before the — day of —*) to the treasurer of the — given under our hands the day and year first above mentioned.

A. B.

C. D.

§ 15. Convictions not to be quashed for want of form—nor removed by *certiorari*—nor any warrant of commitment void by reason of any defect therein, provided it be alleged therein that it is founded on a conviction, and there be a valid conviction to sustain the same; and no distress to be deemed unlawful nor the party a trespasser on account of any defect or want of form in the summons, conviction, warrant, distress, or other proceeding; but the party aggrieved by such irregularity may secure full satisfaction for *special damage*, if any, in an action upon the case. § 16. All prosecutions against persons acting under this act to be tried in the district, and commenced within six calendar months; and one calendar month's previous notice in writing given to the defendant, and defendant may tender amends; and no costs allowed to plaintiff unless court shall certify it was a proper action.

*Constables' Fees established by the Judges under the 8 V., c. 39.*

	£ s. d.		
Arrest of each individual upon a warrant, (to be paid out of the district funds, or by the party, as the case may be).	0	5	0
Serving Summons or Subpoena .....	0	1	3
Mileage, 6d. per mile, (to be paid out of the district funds, or by the party, as the case may be.)			
Attending Assizes or Sessions, per day.....	0	5	0
Attending any Justice on trials, under the summary punishment acts, or on the examination of Prisoners charged with any crime, for each day necessarily employed.....	0	5	0
Mileage in going to serve summons or warrant, when the service has not been effected; the Justices in Sessions to be satisfied that due diligence has been used, (to be paid out of the district funds, or by the party, as the case may be.).....	0	0	6
Taking prisoners to goal, 4d. per mile, exclusive of disbursements necessarily expended in their conveyance, (to be paid out of the district funds, or by the party, as the case may be.)			
Summoning Jury for inquest .....	0	10	0
Attending inquest for each day other than the first.....	0	5	0
Serving notice of appointment of Constables, when personally served.....	0	2	6

Levying upon distress warrant and returning the same, where charge not provided by law..... 0 5 0  
 Advertising and selling under distress warrant, where a charge not provided by law..... 0 5 0  
 Travelling to make distress, or to search for goods to make distress when no goods are found, 4d per mile, when charge not otherwise provided by law.  
 Appraisement, whether by one appraiser or more, 4d. in the pound on the value of the goods.

*Form of appointment of a Deputy Constable.*

I, C. D., Constable of — in the county of —, do hereby make, substitute and appoint G. H. of — yeoman, my true and lawful deputy, in the office of constable of the said township, so long as I shall hold the same (or during the continuance of my will and pleasure). Witness my hand, the — day of — in the year of our Lord 18—.

*Oath to be administered by Constable to Appraisers, on Goods being distrained for Rent.*

You shall swear that you will faithfully appraise and value the goods now taken in distress, and mentioned in the inventory to you shewn, as between buyer and seller, according to the best of your skill and knowledge. So help you God.

*Memorandum to be endorsed by the Constables on the Inventory.*

Memorandum, that on the — day of — in the year of our Lord 18—, A. B. of — and C. D. of — two sworn appraisers, were sworn upon the holy Evangelists, by me E. F. constable, well and truly to appraise the goods and chattels mentioned in this inventory, according to the best of their skill and knowledge; as witness my hand.

E. F. Constable.

Present at the time of swearing the said A. B. and C. D. as above, and witness thereto.

J. K.

L. M.

*Proclamation by Constable for Rioters to disperse.*

Our sovereign lady the Queen charges and commands all persons here assembled, immediately to disperse themselves, and peaceably depart to their several habitations, on pain of imprisonment.

*Warrant for an Assault on a Constable.*

County of — } To A. B. constable of the township of — in the  
 to wit. } county of — and to all others, her Majesty's  
 constables and peace officers within the said county.

Whereas C. D. hath this day made complaint on oath, before me C. J., Esquire, one of her Majesty's justices of the peace in and for the said county, that E. F. of — in the said county, labourer, on the — day of — last, aforesaid, in the county aforesaid, in and upon him the said C. D. did make a violent assault, and then and there did beat, wound and ill-treat him, the said C. D. then being one of the constables

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of the said township, and then and there also being in the due execution of his office as constable aforesaid; these are therefore to command you, the said constable, in her Majesty's name, forthwith to apprehend the said E. F. and bring him before me at — to answer the said complaint, and to be further dealt with according to law. Given, &c.

J. C.

*Commitment of a Constable for a wilful escape.*

County of — } To the keeper of the gaol at Toronto, in the county  
to wit, — } of —

Receive into your custody, in the said gaol, and there safely keep until the next general quarter sessions of the peace to be holden in and for the said county, or until thence otherwise delivered by due course of law, the body of A. B. one of the constables of — in the said county, herewith sent you, and charged before me J. C., Esquire, one of her Majesty's justices of the peace in and for the said county, on the oath of C. D. with having this day wilfully and designedly suffered and permitted one G. H. to escape out of his custody, and go at large at — aforesaid, in the county aforesaid, the said G. H. having been committed to the custody of him the said A. B. as such constable as aforesaid, by virtue of a warrant under my hand and seal, for felony, to be conveyed by him to the gaol at — aforesaid. Given under my hand and seal, &c.

*Indictment for refusing to serve the office of High Constable. (Arthbold.)*

County of —, } The jurors for our lady the Queen, upon their oath  
to wit, — } present, that at the general quarter sessions of the

peace holden at the city of —, in and for the county of —, on the — day of —, in the — year of the reign of our sovereign lady Victoria, to wit, at the city aforesaid, in the county aforesaid, before A. B. and C. D. Esquires, and others their associates, justices of our said lady the Queen assigned to keep the peace of our said lady the Queen in and for the said county, and also to hear and determine divers felonies, trespasses and other misdemeanors in the said county committed, one J. S., late of the township of —, in the county of —, yeoman, then, and long before, being an inhabitant and residing in the township last aforesaid, in the county aforesaid, and a fit and able person to execute the office of high constable within the said county, at the said sessions, by the justices aforesaid in due manner, was then and there elected to be high constable of the said county, in the room and stead of one J. N.; whereof the said J. S. afterwards, to wit, on the day and year aforesaid, at the township aforesaid, in the county aforesaid, had notice: nevertheless the said J. S. not regarding his duty in that behalf, but contriving and intending the due execution of justice to hinder and prevent, afterwards, to wit, on the day and year aforesaid, at the township aforesaid, in the county aforesaid, unlawfully, wilfully, obstinately and contemptuously did refuse, and from thence continually, until the day of the taking of this inquisition, unlawfully, wilfully, obstinately and contemptuously hath refused, and still doth refuse, to take upon himself and execute the said office of high constable within and for the county aforesaid, to wit, at the township aforesaid, in the county aforesaid.

said, contrary to his duty in that behalf, in manifest contempt and delay of justice, against the form of the statute in such case made and provided, and against the peace of our lady the Queen, her crown and dignity.

The above form, with a slight variation, will answer for petty constables also.

### CONSTITUTIONAL ACTS.

By the imperial statute 14 G. III. c. 88, entitled, "An Act for making more effectual provision for the government of the province of Quebec, in North America," it is enacted that the inhabitants of the said province of Quebec may have, hold and enjoy, the free exercise of the religion of the church of Rome, subject to the king's supremacy declared and established by the 1 Q. Eliz. over all the dominions and countries which then did, or thereafter should, belong to the imperial crown of this realm: and that the clergy of the said church may hold, receive and enjoy their accustomed dues and rights, with respect to such persons only as shall profess the said religion. § 5. And that it shall be lawful for his Majesty, his heirs or successors, to make such provision out of the rest of the said accustomed dues and rights, for the encouragement of the Protestant religion, and for the maintenance and support of a Protestant clergy within the said province, as he or they shall from time to time think necessary and expedient. § 6. Provided that no person professing the religion of the church of Rome, and residing in the said province, shall be obliged to take the oath required by the said statute 1 Q. Eliz. or any other oaths substituted by any other act in the place thereof; but that every such person who by the said statute is required to take the oath therein mentioned, shall be obliged to take and subscribe the following oath, before the Governor, or such other person in such court of record as her Majesty shall appoint:

#### *Form of the Oath.*

I, A. B. do sincerely promise and swear, that I will be faithful and bear true allegiance to his Majesty King George, and him will defend to the utmost of my power, against all traitorous conspiracies and attempts whatsoever which shall be made against his person, crown and dignity; and I will do my utmost endeavour to disclose and make known to his Majesty, his heirs and successors, all treasons and traitorous conspiracies and attempts, which I shall know to be against him or any of them; and all this I do swear without any equivocation, mental evasion, or secret reservation, and renouncing all pardons and dispensations from any power and person whomsoever to the contrary. So help me God.

And every such person who shall neglect or refuse to take the said oath, shall incur the penalties of the 1 Q. Eliz.

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and civil rights, resort shall be had to the laws of Canada, as the rules for the decision of the same.

§ 17. And that nothing herein contained shall extend, or be construed to extend, to prevent his Majesty, his heirs and successors from erecting, constituting and appointing such courts of criminal, civil and ecclesiastical jurisdiction, as he or they shall think necessary and proper for the circumstances of the province.

By the imperial statute 31 Geo. III. c. 31, entitled, "An Act to repeal certain parts of an act passed in the fourteenth year of his Majesty's reign, entitled 'An Act for making more effectual provision for the government of the province of Quebec, in North America, and to make further provision for the government of the said province,'" after noticing that his Majesty had been pleased to signify, by his message to both houses of parliament, his royal intention to divide his province of Quebec into two separate provinces, to be called the province of Upper Canada and the province of Lower Canada, certain provisions were thereby made for the division of the said province, and for providing a separate legislature for each province. But as the two provinces have been recently re-united by an act of the imperial legislature, and now again constitute but one province, it will be sufficient here to give the provisions of the act by which the re-union has been effected.

By 4 & 5 Vic. c. 35, entitled "An Act to re-unite the provinces of Upper and Lower Canada, and for the government of Canada:" after reciting that it was necessary that provision be made for the good government of the provinces of *Upper Canada* and *Lower Canada*, in such manner as might secure the rights and liberties and promote the interests of all classes of her Majesty's subjects within the same, and that to this end it was expedient that the said provinces be re-united and form one province for the purposes of executive government and legislation: It is enacted, that it should be lawful for her Majesty, with the advice of her privy council, to declare or authorise the governor-general of the said two provinces to declare by proclamation that the said provinces, upon, from and after a certain day in such proclamation to be appointed, which day should be within fifteen calendar months next after the passing of this act, should form and be one province, under the name of the province of Canada, and thenceforth the said provinces should constitute and be one province, under the name aforesaid, upon, from and after the day so appointed. § 6. Provides that so much of the 31 Geo. III. c. 31, as provides for constituting and composing a legislative council and assembly within each of the said provinces respectively, and

for the making of laws; and the whole of the Lower Canada acts 1 & 2 Vic. c. 9; 2 & 3 Vic. c. 53; 1 & 2 W. 4 c. 23, should continue in force until the union by proclamation, and should be repealed from that day, but not revive any former enactment by such repeal. § 3. After the re-union there shall be within the province of Canada one legislative council and one assembly, to be called the Legislative Council and Assembly of Canada, with power to her Majesty, by and with the advice and consent of such council and assembly, to make laws for the peace, welfare and good government of the province of Canada; such laws not being repugnant to this act, &c. § 4. It shall be lawful for her Majesty, by an instrument under the sign manual, to authorize the governor, in her Majesty's name, by an instrument under the great seal of the province, to summon to the legislative council such persons, being not fewer than *twenty*, as her Majesty shall think fit, and from time to time in like manner to summon to the said council such other person or persons as her Majesty shall think fit, and every person so summoned shall thereby become a member of the legislative council; but no person shall be so summoned who shall not be of the full age of 21 years, and a natural born subject, or naturalized by act of Parliament of Great Britain, or by the legislature of Upper or Lower Canada, or the province of Canada. § 5. Members to hold their seats for life, subject to the provisions hereinafter contained. § 6 authorises such members to resign their seats. § 7. And if any legislative councillor shall be absent two successive sessions without permission of the governor, or shall take the oath of allegiance to any foreign power, or do any act whereby he may become a subject or citizen of any foreign power, or become entitled to the rights or immunities of such, or shall become bankrupt or insolvent, or a public defaulter, or be attainted of treason, or convicted of felony or of any infamous crime, his seat shall thereby become vacant. § 8. Legislative council to determine questions of vacancy, subject to an appeal to her Majesty. § 9. The governor to appoint and remove the speaker. § 10. Ten members, including the speaker, to constitute a *quorum*; and all questions to be decided by the majority, and the speaker to have a casting vote. § 11 authorises the governor, from time to time, in her Majesty's name, to summon and call together a legislative assembly. § 12. Upper and Lower Canada to be represented by an equal number of representatives. § 13. *County of Halton*, in Upper Canada, to be divided into two ridings, east and west, and each to be represented by one member. § 14. *County of Northumberland*, in Upper Canada, to be divided into two ridings, north

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and south, and each to be represented by one member. § 15. County of Lincoln, in Upper Canada, to be divided into two ridings, north and south, each to be represented by one member. § 16. Every other county and riding in Upper Canada to be represented by one member. § 17. City of Toronto to be represented by two members. The towns of Kingston, Brockville, Hamilton, Cornwall, Niagara, London, and Bytown, to be each represented by one member. § 18. Every county in Lower Canada, which before the 1 & 2 Vic. c. 9, was entitled to be represented, except the counties of *Montmorency*, *Orleans*, *L'Assomption*, *La Chesnaye*, *L'Acadie*, *Laprairie*, *Dorchester*, *Beauce*, to be represented by one member. § 19. The counties of *Montmorency* and *Orleans* to be united and called the county of *Montmorency*. The counties of *L'Assomption* and *La Chesnaye* to be united and called the county of *Leinster*; and the counties of *L'Acadie* and *Laprairie* to be united and called the county of *Huntingdon*; and the counties of *Dorchester* and *Beauce* to be united and called the county of *Dorchester*; and each of said counties to be represented by one member. § 20. Cities of *Quebec* and *Montreal* to be each represented by two members; and the towns of *Three Rivers* and *Sherbrooke* to be each represented by one member. § 21. Boundaries of cities and towns to be settled by the Governor: the parts adjoining and not included within such boundaries to be taken as part of the adjoining county or riding. § 22. Returning officers to be appointed by the Governor. § 23. No person obliged to execute such office for any longer term than one year, or oftener than once, unless otherwise provided by the legislature. § 24. Writs of election to be issued by the Governor within fourteen days after the sealing of the instrument, for calling together the assembly: directed to the returning officers, returnable within fifty days unless otherwise provided by the legislature: and writs in like manner to be issued in the case of any vacancy, returnable as above; and in case such vacancy shall happen by death of the member, or his being summoned to the council, the writ shall be issued within six days after notice thereof left at the office of the proper officer for issuing same. § 25. The Governor to fix the time and place of holding elections, giving not less than eight days notice thereof. § 26. The legislature authorised to alter the divisions and extent of the several counties, ridings, cities and towns, and to establish new divisions; and to alter the apportionment of representatives, and alter and regulate the apportionment of returning officers, and make provision for issuing and return of writs of election: Provided that no bill be presented for her Majesty's assent by which the representation in the assembly shall be

altered, unless the second and third reading thereof in the council and assembly shall have passed with the concurrence of two-thirds of the members for the time being of both houses; and unless addresses from both houses be presented to the governor stating that such bill has been so passed. § 27. Until otherwise provided by the legislature, the laws of Upper Canada in force at the time of passing this act, and the laws of Lower Canada in force at the time of passing the 1 & 2 Vic. c. 9, relating to the qualification and disqualification of members (except the property qualification hereinafter provided) and relating to the qualification and disqualification of electors, and to the oaths by them, and the powers and duties of returning officers, and the proceedings at such elections, and the period of continuance thereof, and relating to the trials of controverted elections, and vacating seats of members, shall be applied to elections of members for the province of Canada. § 28. No person shall be capable of being elected a member who shall not be legally or equitably seised as of freehold, for his own use, of lands or tenements held in free and common socage; or seised or possessed, for his own use, of lands or tenements held in *fee* or *en roture*, within the province of Canada, of the value of £500 sterling over and above all incumbrances: and every candidate, before he shall be capable of being elected, shall, if required by any other candidate, or by any elector, or by the returning officer, make the following declaration:—

I, A. B., do declare and testify, that I am duly seised at law or in equity as of freehold, for my own use and benefit, of lands or tenements held in free and common socage [or duly seised and possessed, for my own use and benefit, of lands or tenements held in *fee* or *en roture* (as the case may be)] in the province of Canada, of the value of five hundred pounds of sterling money of Great Britain, over and above all rents, mortgages, charges, and incumbrances charged upon or due and payable out of or affecting the same; and that I have not collusively or colourably obtained a title to or become possessed of the said lands and tenements, or any part thereof, for the purpose of qualifying or enabling me to be returned a member of the Legislative Assembly of the province of Canada.

§ 29. False declaration to be deemed a misdemeanor, and punished as wilful and corrupt perjury. § 30. It shall be lawful for the Governor for the time being to fix such place or places, within any part of the province of Canada, and such times for holding the first and every other session of parliament, as he may think fit; to be afterwards changed or varied, as the Governor may judge desirable and most consistent with general convenience and the public welfare, giving sufficient

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notice thereof; and also to prorogue the parliament and dissolve the same by proclamation, or otherwise, whenever he shall deem it expedient. § 31. A session to be held once at the least every year, so that twelve calendar months shall not intervene between the last sitting in one session and the first sitting of the next: and every assembly shall continue for four years from the day of the return of the writs; subject, nevertheless, to be sooner prorogued or dissolved by the Governor. § 32. The parliament to be convened for the first time within six calendar months after the re-union. § 33. The assembly, at the first meeting after every general election, to elect one of their number to be speaker; and in case of his death, resignation, or removal, forthwith to elect another. § 34. Twenty members at the least, including the speaker, to constitute a *quorum*. All questions to be decided by the majority present, and the speaker to have a casting vote. § 35. No member of the council or assembly to sit or vote until he shall have taken and subscribed the following oath before the Governor, or some person or persons by him authorised:—

I, A. B., do sincerely promise and swear, that I will be faithful and bear true allegiance to Her Majesty Queen Victoria, as lawful sovereign of the United Kingdom of Great Britain and Ireland, and of this province of Canada, dependent on and belonging to the said United Kingdom; and that I will defend her to the utmost of my power against all traitorous conspiracies and attempts whatever which shall be made against her person, crown and dignity; and that I will do my utmost endeavour to disclose and make known to her Majesty, her heirs and successors, all treasons and traitorous conspiracies and attempts which I shall know to be against her or any of them: and all this I do swear without any equivocation, mental evasion, or secret reservation, and renouncing all pardons and dispensations from any person or persons whatever to the contrary. So help me God.

§ 36. Affirmation may be made where authorised by law. § 37. The Governor may, in her Majesty's name, assent to or reserve bills for her Majesty's pleasure. § 38. Bills assented to may be disallowed within two years. § 39. No reserved bill to be in force until the Governor, by speech or message to both houses, or by proclamation, shall signify her Majesty's assent. § 40. Provision made for the appointment of a lieutenant-governor by her Majesty, and a deputy or deputies by the Governor, with adequate powers. § 41. After the re-union, all legislative records to be in the English language. § 42. All bills affecting ecclesiastical and crown rights to be reserved and laid before the imperial parliament, and not assented to until thirty days after the same shall have been laid before both houses, nor in case either house shall pre-

sent an address against such bills. § 43. Provision for the regulation of colonial commerce. § 44. And respecting the courts of appeal, probate, Queen's bench, and chancery, in Upper Canada; and court of appeal in Lower Canada. § 45. Powers, authorities, and functions of the government to be vested in and exercised by the Governor of the province of Canada, with the advice, or with the advice and consent of, or in conjunction with the executive council or any member thereof, as may be appointed by her Majesty for the affairs of the province; or by the said Governor *individually* and alone, in cases where the advice, consent, or concurrence of the executive council is not required. § 46. All existing laws in both provinces to remain in force, except in so far as repealed by this or any subsequent act of the legislature. § 47. The courts of civil and criminal jurisdiction within both provinces to remain until otherwise provided. § 48. Provides for temporary enactments. § 49. Repeals the provisions contained in the 3 G. IV. c. 119, respecting the revenue claims of the two provinces. § 50. The revenue in future to form one consolidated fund. § 51. Charged with the costs of collection. § 52. £45,000 payable thereout to her Majesty, her heirs and successors, for defraying the expense of the several services in schedule A; and during the life of her Majesty, and for five years afterwards, a further sum of £30,000, payable to her Majesty, her heirs and successors, for defraying the expenses in schedule B. § 53. The salaries of the Governor and of the judges to be as stated in schedule A until altered by the legislature: but it shall be lawful for the Governor to abolish any of the offices named in schedule B, or to vary the sums appropriated therein, and any saving accruing from any such alteration in either of the schedules shall be appropriated as her Majesty may think fit: accounts in detail of the expenditure of the said sums of £45,000 and £30,000 shall be laid before both houses of the legislature within thirty days next after the beginning of the session after such expenditure made: *Provided*, that not more than £3,000 shall be payable at the same time, for pensions to the judges, out of the said sum of £45,000; and not more than £5,000 payable at the same time for pensions out of the said sum of £30,000: and a list of all such pensions shall be laid yearly before the legislature. § 54. During the time aforesaid, said sums of £45,000 and £30,000 shall be accepted by her Majesty by way of *civil list*, instead of territorial and other revenues now at the disposal of the crown, and *three-fifths* of the nett produce of said territorial and other revenues shall be paid over to the consolidated revenue fund; and during the life of

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her Majesty, and for five years afterwards, the remaining two-fifths shall also be paid over to the said consolidated fund. § 55. Consolidation of the revenues not to affect the payment out of the consolidated fund of any sum or sums heretofore charged upon the rates and duties of either of the said provinces, for such time as shall have been appointed by the respective legislatures. § 56. provides for the charges on the consolidated fund, in the following order:—First—The expenses of collection. Second—The annual interest of the public debt of the provinces of Upper Canada and Lower Canada at the time of the re-union: Third—Payments to the clergy of the United Church of *England and Ireland*, and to the clergy of the Church of Scotland, and to ministers of other denominations, pursuant to any law or usage. Fourth—The said sum of £45,000: Fifth—The said sum of £30,000. Sixth—The other charges upon the rates and duties levied within the said province of Canada: § 57. Subject to the above charges, the consolidated revenue fund to be appropriated by the legislature: *Provided*, that all bills for appropriating such surplus, or for imposing any new tax or import, shall originate in the legislative assembly; to be first recommended in a message by the Governor. § 58. Authorizes the Governor to constitute new townships, under the great seal. § 59. The powers given to the Governor shall be exercised in conformity with her Majesty's instructions and orders. § 60. The Magdalens may be annexed to the island of Prince Edward, at her Majesty's pleasure. § 61. Interpretation clause. § 62. This act may be amended or repealed during the present session.

SCHEDULE A.

Governor.....	£ 7,000
Lieutenant-Governor.....	1,000
<i>Upper Canada</i>	
One Chief Justice.....	1,500
Four Puisné Judges, at £800 each.....	3,200
One Vice-Chancellor.....	1,125
<i>Lower Canada</i>	
One Chief Justice, Quebec.....	1,500
Three Puisné Judges, Quebec, at £800 each.....	2,700
One Chief Justice, Montreal.....	1,100
Three Puisné Judges, Montreal, at £800 each.....	2,700
One resident Judge at Three Rivers.....	900
One Judge of the Inferior District of St. Francis.....	500
One Judge of the Inferior District of Gaspe.....	500
Pensions to the Judges, Salaries of the Attorneys and Solicitors General, and Contingent and Miscellaneous Expenses of Administration of Justice throughout the Provinces of Canada.....	26,875
	<b>£45,000</b>



## SCHEDULE B.

Civil Secretaries and their Offices.....	£ 3,000
Provincial Secretaries and their Offices.....	3,000
Receiver General and his Office.....	3,000
Inspector General and his Office.....	2,000
Executive Council.....	2,000
Board of Works.....	2,000
Emigrant Agent.....	700
Pensions.....	6,000
Contingent Expenses of Public Offices.....	3,300

£30,000

## CONTEMPT.

A Contempt is in legal meaning either an open resistance or insult to the power of a court of record, committed by any person in the face of the court, or a disobedience to its rules, orders or process, by a party who is not present in court—4 *Bl. Com.* 283; so, where abusive words are spoken to a justice of the peace in the execution of his office, whilst sitting as a magistrate, he may commit for the contempt; but if the words are spoken of him behind his back, the party can then only be indicted.—*R. v. Revel*, 1 *Str.* 420. A commitment by the sessions or other court of record need not be under seal, as the memorial thereof, which may at any time be entered of record, is sufficient without any warrant—1 *Hale*, 583, 584; but a justice cannot commit for a contempt, except by warrant in writing—*Mayhew v. Locke*, 7 *Tunst.* 63; and unless the words be spoken under circumstances which render it probable they may prevent the due administration of justice, it will be safer for the magistrate to abstain from summary punishment and proceed by indictment, which will certainly lie for words addressed to him while in the discharge of his duty—*Dickson*, *Q. S.* 43; if however the party be imprisoned *instantly*, the commitment must be for a time certain, and a commitment until the defendant is discharged by due course of law is bad.—*Rex v. James*, 5 *B. & A.* 894. It has been held that a commitment which charged the party generally with having insulted justices of the peace in the execution of their office, without specifying what he said or did, is sufficient—2 *Barnard*, 155, it is however in general advisable to describe the offence precisely but in substance as in an indictment.—*Chitty*, *C. L.* 112. A justice of the peace may commit for contempt while in the execution of his office out of sessions, but the commitment must be by warrant in writing and for a specified period.—*Jones v. Glarford*, *Micks*. 2 *V.*, *Cameron's Digest*, 544.

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*Commitment for Contempt.*

County of — } To the keeper of —  
to wit.

Receive into your custody the body of C. D. herewith sent you by me A. W., Esquire, one of her Majesty's justices of the peace in and for the said county, and convicted (or charged, as the case may be) by me, the said justice, upon the view, of me the said justice, with contempt and indecent behaviour in my presence, by insulting and obstructing me, the said justice, in the due execution of my office, as such justice as aforesaid, (and for saying, &c., in the presence and hearing of me, the said justice,) [here set forth the particulars, if the justice shall think it necessary,] and him the said C. D. detain in your custody, in the jail aforesaid, for the space of — hours, to be computed from the hour of — o'clock, in the forenoon of this present — day of — instant, for his contempt aforesaid, (or until he find two sufficient sureties for his appearance at the next general quarter sessions of the peace for the said county, to answer to the charge aforesaid, or be otherwise discharged by due course of law). Given under my hand and seal, at —, in the said county, the — day of —.

CONVICTION.

A Conviction ought to be in words and figures at length. It is not usual or necessary for the convicting justices to draw up a formal conviction, in the first instance, in every case in which a penalty is inflicted, but to make minutes of the proceedings (without attending to the precise form), at the time of pronouncing the judgment, from which they may afterwards, if occasion require, make out a regular conviction; nor is it necessary that it should be drawn up in due form, before the penalty is levied.—*Paley on Con.* 316. Even after an action brought, it seems that justices may draw up a conviction, and give it in evidence, by way of defence, provided the date is warranted in fact by the time when the conviction actually took place.—*Massey v. Johnson*, 12 East. 82.

When the statute prescribes a particular form of conviction, it must be exactly followed; but when it is merely directory, "that the justice be authorised or empowered to draw up the conviction in the form or to the effect following," then the justice is not bound to any precise form of words, although it will be prudent for him to adhere to the form given, as nearly as possible, and pursue the words of the statute.—*Pul. on Con.*

\* By statute 3 W. IV., c. 4, it is enacted, that in all cases wherein a conviction shall take place, and no particular form for the record thereof hath been directed, the justice or justices duly authorised to proceed summarily therein, and before whom the offender or offenders shall have been convicted, shall and may cause the record of such conviction to be drawn up in the

manner and form following, or in any words to the same effect, *mutatis mutandis*, that is to say,—

*Form of Conviction.*

County } Be it remembered, that on the — day of — in the  
to wit. { year of our Lord — at — in the county of —  
A. B. of — in the county of — labourer, (or as the case may be)  
personally came before me (or before us) C. D. one (or more, as the  
case may be) of her Majesty's justices of the peace for the said county  
of — and informed me (or us, as the case may be) that E. F. of —  
in the county of — labourer, (or as the case may be) on the —  
day of — in the year of our Lord — at — in the said county of  
— did [here set forth the fact for which the information is laid] con-  
trary to the form of the statute in such case made and provided, where-  
upon the said E. F. after being duly summoned to answer the said  
charge, appeared before me (or us, as the case may be) on the —  
day of — in the year of our Lord — at — in the said county of  
— and having heard the charge contained in the said information,  
declared that he was not guilty of the said offence, (or as the case may  
happen to be) did not appear before me (or us), pursuant to the said  
summons, or did neglect and refuse to make any defence against the  
said charge, whereupon I, or we, (as the case may be) or nevertheless  
I, or we, (as the case may be) the said justice or justices, did proceed  
to examine into the truth of the charge contained in the said information,  
and on the — day of — aforesaid, at — in the county of —  
aforesaid, one credible witness, to wit, A. W. of — in the county of  
— labourer, (or as the case may be) upon his oath deposed and saith,  
[if E. F. be present, say, in the presence of E. F.] that on the — day  
of — in the year of our Lord — the said E. F. at — in the said  
county of — [here state the evidence, and as nearly as possible in  
the words used by the witness; and if more than one witness be  
examined, state the evidence given by each; or if the defendant confess,  
then, instead of stating the evidence, say, and the said E. F. acknow-  
ledged and voluntarily confessed the same to be true.] therefore it mani-  
festly appearing to me (or us, as the case may be) that he the said E. F.  
is guilty of the offence charged upon him in the said information, I, or  
we (as the case may be) do hereby convict him of the offence aforesaid,  
and do declare and adjudge, that he the said E. F. hath forfeited the  
sum of — of lawful money of this province for the offence aforesaid,  
to be distributed or paid (as the case may be) according to the form of  
the statute in that case made and provided. Given under my hand (or  
our hands as the case may be) and seal (or seals), the — day of —  
in the year of our Lord —.

§ 2. In all cases where two or more justices are authorised to hear and determine any complaint, one justice shall be competent to receive the original information or complaint, and issue the summons or warrant requiring the party to appear before two justices, as the case may require, and after adjudication thereon, by two or more such justices, all subsequent

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proceedings to enforce obedience thereto, whether respecting the fine, imprisonment, costs or other matter, may be enforced by either of the said justices, or by any other justice of the district, having before him a record of such conviction, certified by the justice or justices who adjudged the case. § 3. No conviction shall be set aside in consequence of any defect of form. § 4. And in cases where convictions shall be quashed, no more damages than one shilling, and the amount levied by virtue thereof, shall be recoverable against any justice, unless the act complained of shall be charged in the declaration to have been done maliciously. § 5. And no damages or costs, when the plaintiff shall be proved to have been guilty.

A defendant is entitled to a copy of the conviction, and the justice is bound to give it him, if requested.—*R. v. Midlum, Burr. 1720*. But the justice is not thereby precluded from drawing up and returning a conviction in a more formal shape; for this last is to be taken as the only authentic record of the proceedings.—*R. v. Barber, 1 East: 82*; *R. v. Allan, 15 East. 352*.

A justice should, in all cases, return a conviction to the sessions, whether the party appeal or not, or whether an appeal is or is not given, in order that the crown may not be deprived of its share of forfeitures.—*R. v. Eaton, 2 T. R. 285*.

By 4 & 5 V., c. 12, § 1. every justice of the peace before whom any trial or hearing shall be had, under any law now or hereafter to be in force, imposing any fines, forfeitures, penalties or damages upon the defendant or defendants in case of convictions, shall make a due return thereof in writing, under his hand, to the next general quarter sessions for the district in which such conviction shall take place, and of the receipt and application by him of the monies received from any such defendant or defendants; and in case such convictions shall have taken place before two or more justices, each justice joining in such conviction to make an immediate return thereof, as nearly as possible in the form set forth in the annexed schedule; and the justices to whom any such monies shall be afterwards paid shall make a return of the receipts and application thereof to the next general quarter sessions, to be filed by the clerk of the peace with the records of his office. § 2. In case any such justice shall neglect or refuse, or shall make a false, partial, or incorrect return, or shall wilfully receive a larger amount of fees than by law is authorised, then he shall forfeit and pay £20, with full costs of suit, to be recovered by any person in any court of record in Canada West; one moiety to be paid to the party suing, and the other to the Receiver General, for the use of the province. § 3. Penalties to be



and shall forthwith command four of the next towns, or five, or six, to appear before him in such a place; and when they are come, the coroner upon the oath of them, shall enquire if they know where the person was first slain, whether it were in any house, field, &c., and who were there. Likewise it is to be enquired, who were culpable either of the act or of the force, and who present, and of what age they be, (if they can speak, and have discretion,) and as many as shall be found culpable by the inquest shall be committed to gaol; and such as shall be found there, and be not culpable, shall be attached until the coming of the justices, and their names shall be written in the rolls. If any man be slain suddenly, which is found in the fields, or in the woods, first it is to be seen whether he were slain in the same place or not, and if he were brought there they shall do as much as they can to follow their steps that brought him; it shall be enquired also, if the dead person were known, and where he lay the night before. And if any be found culpable of the murder, the coroners shall go to his house and enquire what goods he hath, and what corn he hath in his grange; and if he be a freeman, they shall enquire how much land he hath, and what it is worth yearly, and what crop he hath upon the ground. And they shall cause all the land, corn, and goods to be valued, and delivered to the townships, which shall be answerable before the justices; and likewise of his freehold, how much it is worth yearly, and the land shall remain in the King's hands until the lords of the fee have made fine for it. And these things being enquired, the body shall be buried." § 1.

"In like manner it is to be enquired of them that be drowned, or suddenly slain, whether they were drowned, slain, or strangled, by the sign of the cord about their necks, or any other hurt found upon their bodies; and if he were not slain, then bught the coroner to attach the finder and all others in the company. A coroner also ought to enquire of treasure found, who were the finders, and who is suspected thereof; and that may be perceived where one liveth riotously, haunting taverns, and hath done so of long time, hereupon he may be attached for this suspicion by four, or six, or more pledges. Also all wounds ought to be viewed, the length, breadth and deepness, and with what weapons, and in what part of the body the wound is; and how many be culpable, and how many wounds there be, and who gave the wound: all which things must be enrolled in the roll of the coroners. Concerning horses, boats, carts, &c., whereby any are slain, they shall be delivered unto the towns, as before is said. If any be suspected of the death of a man, being in danger of life, he shall be taken and im-



prisoned. In like manner hue and cry shall be levied on all murderers, burglars, and for men slain, or in peril of death; as is used in England, and all shall follow the hue and steps as near as can be; and he that doth not, and is convict, shall be attached to be afore justices of the gaol." § 2.

*Of Sudden, Violent Deaths, which are all within the Coroner's Office to enquire, and Inquisitions.*

Sudden, violent deaths, are of these kinds:—1. *By the visitation of God*;—2. *By misfortune*, where no other had a hand in it; as if a man fall from a horse or cart; 3. *By his own hand, as felo de se*; 4. *By the hand of another, where he is known, whether by murder, manslaughter, se defendendo, or per infortunium*.—2 *Hal. P. C.* 62.

Coroners are not to obtrude themselves into private families, where there is no pretence for supposing that the deceased died otherwise than by a natural death.—11 *East.* 231.

1. The dying suddenly is *not* to be understood of a fever, apoplexy, or other visitation of God, for then the coroner might be sent for in every case.—*Umfr.* 208. If the inquisition find that he died *by the visitation of God*, there is no more to be done, only the inquisition, together with the examination, are to be returned to the next gaol delivery.

2. If the inquest find the death *per infortunium* simply, as a fall, &c., then the coroner is to take examination, and return the same, with the inquisition, *to the next gaol delivery*, and to enquire of the *deodand* and the value, and in whose hands, and to seize and deliver the same to the township, to be answerable for the same to the King.—4 *Ed. I.*

3. If the inquest find a man *felo de se*, who is one that puts an end to his own existence, or commits any unlawful malicious act, the consequence of which is his own death: as, if attempting to kill another, he runs upon his antagonist's sword; or shooting at another, the gun bursts and kills himself: they ought to find the *special matter*, and also what goods and chattels he had, of what value, and seize and deliver the same to the township, to be answerable to the King, or his almoner, or the lord of the franchise, to whom they belong, and shall bind over the first finder of the body to the next gaol delivery. 2 *H. P. C.* 62.

4. If the party be slain, and the felon is *not known*, they are to find their inquisition accordingly, and shall bind over the first finder of the body to the next gaol delivery, and return his examinations, together with his inquisitions.—3 *H. P. C.* 62.

5. But if the person was slain, and the party that did it was known, and the inquisition found him guilty of the death, or

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that he died by his hand, there were these proceedings, viz:—The inquest were also to enquire of all that were *present, aiding and abetting*; they shall also enquire of all accessories *before the fact*; but they cannot enquire of accessories *after the fact*. If they find him guilty, as principal, or accessory before the fact, they shall enquire whether *he fled* for the same; if the inquisition find that he fled, it is a forfeiture of his goods; but they cannot be seized before he be convicted of the felony.—1 R. III. c. 3; 2 H. P. C. 63.

If the persons that are found guilty by the inquest be taken, the coroner may and must commit them to the sheriff, and he is to send them to the gaol; but if they be not found he is not to proceed to *outlawry*, but return his inquisition to the next gaol delivery, and the justices of gaol delivery are to proceed against the offenders if in gaol; if not, then to certify the inquisition into the King's Bench, and then process of *outlawry* to go against them upon that inquisition.—4 Ed. I.; 3 H. VII. c. 1; 2 H. P. C. 64.

It is clearly agreed that the inquest shall be taken on the *view* of the body, and that an inquest otherwise taken by the coroner is void.—2 Haw. P. C. c. 9, § 23. But when the body cannot be found, or is so putrefied that a view would be of no service, the coroner, without a special commission, cannot take the inquest; but in such cases it shall be taken by justices of the peace, or other justices authorised, by testimony of witnesses.—Vent. 362; Haw. P. C. c. 9, § 25. It is an indictable offence to bury the body before, or without, sending for the coroner.—1 Salk. 371. And a coroner may, within a convenient time, take up a dead body out of the grave, in order to view it and hold an inquest. The coroner may enquire of accessories *before* the fact, but not of accessories *after* the fact.

Where there is no pretence for supposing that the deceased died otherwise than by a natural death—for instance, if he died of fever, apoplexy, or other visitation of God—an inquisition ought not to be held.—Umfr. 208. The coroner ought also to enquire of the death of all persons who die in prison, that it be known whether they die by violence or any unreasonable hardships; for if a prisoner, by the dures of the gaoler, come to an untimely death, it is murder in the gaoler.—3 Inst. 52, 91. And this inquest upon prisoners ought to consist of a party jury—that is, six of the prisoners (if so many there be), and six of the next ville or parish not prisoners.—Umfr. 212, 213.

### Of Crimes.

The crimes which are likely to come under the cognizance

of a coroner, and the law thereon, are fully set forth under the title "Homicide," with the exception of the crime of *Felonia de se*, or suicide; which is committed when a person of the age of discretion and *compos mentis*, kills himself by stabbing, poison or any other way.—1 *Hal. P. C.* 411. If he lose his memory by sickness, infirmity or accident, and kills himself, he is not *felo de se*, neither can he be said to commit murder upon himself or any other. It is not every melancholy or hypochondriacal distemper that denominates a man *non compos mentis*, for there are few who commit this offence but are under such infirmities, but it must be such an alienation of mind that renders them to be madmen, or frantic, or destitute of the use of reason. A lunatic killing himself in a fit of lunacy is not *felo de se*; but if he kills himself in a lucid interval he is a *felo de se*.—1 *Hal. P. C.* 412. If a man voluntarily give himself a mortal wound, and die within a year and a day of that wound, he is *felo de se*, and he cannot purge the crime nor the forfeiture inflicted by the law, by his repenting what he had done.—*Ib.* 411. It must be simply *voluntary* and with an *intent* to kill himself. If A. to prevent a *gangrene* beginning in his hand, doth, without advice, cut off his hand, by which he dies, he is not thereby *felo de se*; for though it was a voluntary act, yet it was not with an intent to kill himself.—*Ib.* 412. A *felo de se* shall be buried in the highway, with a stake driven through his body.—4 *Bl. Com.* 190. This barbarous custom has been repealed in England, by statute 4 G. IV. which does not however extend to this province. The forfeiture of *felo de se* is of goods and chattels only.—1 *Hale, P. C.* 413.

#### Of Deodands.

A deodand is where any man kills himself, or is by misfortune slain by a horse, cart, or any other thing that *moveth* to his death; then the thing which is the cause of, or moved to his death shall be forfeited to the King.—*Litt. Pr. Reg.* 607. No deodand is due when an infant, under the age of discretion, is killed by a fall from a cart, or horse, or the like, not being in motion.—1 *Hale*, 422. But if a horse, or ox, or other animal, of his own motion kill, as well an infant as an adult, or if a cart run over him, they shall in either case be forfeited as deodands. Where a thing *not in motion* is the occasion of death, that part only which is the immediate cause is forfeited; as, if a man be climbing up the wheel of a cart, and is killed by falling from it, the wheel alone is a deodand; but wherever the thing is in motion, not only that part which immediately gives the wound, (as the wheel which runs over the body) but

all things which move with it, and help to make the wound more dangerous, as the cart and loading are *deadland*.—1 *Haw. P. C.*, c. 26.

*Where the act of one Coroner shall be as effectual as if done by all.*

Wherever coroners are authorised to act as judges, as in the taking of an inquisition of death, the act of any one of them who first proceeds in the matter, is of the same force as if all had joined in it.—2 *Hal. P. C.* 56. But it is said, that *after* such proceeding by any one of them, the act of any other will be void.—*Ib.* 59. Also, it is certain that when coroners are empowered to act only ministerially, as in the execution of a process directed to them upon the default or incapacity of the sheriff, all their acts will be void, wherein they do not all join. *Stunf. P. C.* 53, a. One coroner may execute the writ, as in the case of an *exigent*; but if there be more coroners than one for the county, the return must be in the name of all.—2 *Hal. P. C.* 56. The taking of an inquisition cannot be done by deputy.—2 *Hal. P. C.* 58, 60. In the case of process to coroners upon any disability in the sheriff, the sheriff is no longer considered as an officer of the court in that suit; and the coroners may do all such lawful acts as the sheriff himself might have done, and they may take the *posse comitatus*.—*Hob.* 85. If the sheriff be sued, the writ is to be directed to the coroners.—*Impey.* 490. If there be above two coroners in a county, and a writ be directed to the coroners, though one die, the others may execute; but if one only survive, he can neither execute nor return the writ till another be made.—2 *Hal. P. C.* 56. Where the sheriff and coroners of particular places and liberties, have been all challenged, in all cases *elisors* have not been appointed, but *venires* have been directed to the sheriff of the county at large, to summon a jury from the next adjacent *viere*; and two *elisors* at least, ought to be appointed.—*Bendl.* 23; *Dy.* 367. The same challenges that may be made to the sheriff, may also be made to the coroners; in which case, if all the coroners be challenged, the *venire* may then be awarded to *elisors*, who are always chosen and appointed by the court, by rule, to return the jury.

By 12 Vic. c. 81, § 136, one or more coroners shall and may be appointed for every city and town incorporated under the authority of this act.

#### *His Duties by Provincial Statute.*

By statute 13 Vic. c. 56, entitled "An Act to amend the law respecting the office of coroner," it is enacted by sec. 1, that

from and after the passing of this act, no inquest shall be holden on the body of any deceased person by any coroner, until it has been first made to appear to such coroner that there is reason to believe that such deceased person came to his death under such circumstances of violence or unfair means, or culpable or negligent conduct, either of himself or of others, as require investigation, and not through any mere accident or mischance: Provided always, that an inquest shall be holden on the body of any person who shall die while in confinement in any penitentiary.

§ 2. That upon the death of any prisoner or any lunatic confined in any lunatic asylum, it shall be the duty of the warden, gaoler, keeper or superintendent of any penitentiary, gaol, prison, house of correction, lock-up house, or lunatic asylum, in which such prisoner or lunatic shall have died, immediately to give notice of such death to some coroner of the county or city in which such death shall have taken place, and thereupon such coroner shall proceed forthwith to hold an inquest upon the body of such deceased prisoner or lunatic.

§ 3. That if any person, having been duly summoned as a juror or witness to give evidence upon any coroner's inquest, shall not, after being openly called three times, appear and serve as such juror, or appear and give evidence on such inquest, every such coroner shall be empowered to impose such fine upon any person so making default, as he shall think fit, not exceeding *twenty shillings*; and every such coroner shall make out and sign a certificate, containing the name, residence, trade or calling of such person so making default, together with the amount of the fine imposed and the cause of such fine, and shall transmit such certificate to the clerk of the peace in the county in which such defaulter shall reside, on or before the first day of the Quarter Sessions of the Peace then next ensuing for such last mentioned county, and shall cause a copy of such certificate to be served upon the person so fined, by leaving it at his residence within a reasonable time after such inquest; and all fines and forfeitures so certified by such coroner shall be estreated, levied and applied in like manner, and subject to the like powers, provisions and penalties in all respects as if they had been part of the fines imposed at such Quarter Sessions: provided always, that nothing herein contained shall be construed to affect any power now by law vested in any coroner for compelling any person to appear and give evidence before him on any inquest or other proceeding, or for punishing any person for contempt of court, in not so appearing and giving evidence, or otherwise.

§ 4. That inquest, such inquest, want of proved, of mere others of superior judge of occasion before the same shall

§ 5. That coroner's person v last illness shall be the schedule practitioner to the coroner immediately medical such order practitioner place where for the medical notice and notice of a of the coroner witness on inquest: before the deceased improper other person not be all deceased.

§ 6. That juryman's has not been medical person examined are hereby in writing practitioner

§ 4. That no inquisition found upon or by any coroner's inquest, nor any judgment recorded upon or by virtue of any such inquisition, shall be quashed, stayed or *reversed* (a) for want of the averment therein of any matter unnecessary to be proved, nor for the omission of any technical word or words of mere form or surplusage, and in all such cases, and all others of technical defect, it shall be lawful for either of the superior courts of common law, or any judge thereof, or any judge of assize or gaol delivery, if he shall think fit, upon the occasion of any such inquisition being called in question before them or him, to order the same to be amended, and the same shall be amended accordingly.

§ 5. That whenever, upon the summoning or holding of any coroner's inquest, it shall appear to the coroner that the deceased person was attended at his or her death, or during his or her last illness, by any legally qualified medical practitioner, it shall be lawful for the coroner to issue his order in the form in the schedule hereunto annexed, for the attendance of such practitioner as a witness at such inquest: and if it shall appear to the coroner that the deceased person was not attended immediately at or before his or her death by any legally qualified medical practitioner, it shall be lawful for the coroner to issue such order for the attendance of any legally qualified medical practitioner being at the time in actual practice in or near the place where the death has happened; and it shall be lawful for the coroner, either in his order for the attendance of the medical witness, or at any time between the issuing of such notice and the termination of the inquest, to direct the performance of a *post mortem* examination, with or without an analysis of the contents of the stomach or intestines, by the medical witness or witnesses who may be summoned to attend at any inquest: Provided that if any person shall state upon oath before the coroner, that in his or her belief the death of the deceased individual was caused partly or entirely by the improper or negligent treatment of any medical practitioner or other person, such medical practitioner or other person shall not be allowed to assist at the *post mortem* examination of the deceased.

§ 6. That whenever it shall appear to the majority of the jurymen sitting at any coroner's inquest, that the cause of death has not been satisfactorily explained by the evidence of the medical practitioner or other witness or witnesses who may be examined in the first instance, such majority of the jurymen are hereby authorized and empowered to name to the coroner, in writing, any other legally qualified medical practitioner or practitioners, and to require the coroner to issue his order, in the

(a) So in the act: should be "reversed."



form hereinbefore mentioned, for the attendance of such last mentioned medical practitioner or practitioners, as a witness or witnesses, and for the performance of such *post mortem* examination as in the fifth section of this act mentioned, whether such examination has been before performed or not; and if the coroner, having been so required, shall refuse to issue such order, he shall be deemed guilty of a misdemeanor, and shall be punishable by fine not exceeding £10, or by imprisonment not exceeding one month, in the discretion of the court trying such offence, or by both, as to the said court shall seem fit.

§ 7. That where any legally qualified medical practitioner has attended upon a coroner's inquest, in obedience to any such order as aforesaid of the coroner, the said practitioner shall receive for such attendance, if without a *post mortem* examination £1 5s.; if with a *post mortem* examination, without an analysis of the contents of the stomach or intestines, £2 10s.; if with such analysis, £5; together with the sum of 1s. per mile, for each mile he shall have to travel in going to and returning from such inquest, such travel to be proved by his own oath to the said coroner, who is hereby authorised and empowered to administer the same; and the coroner is hereby required and commanded to make his order on the treasurer of the county in which such inquest shall be holden, in favour of such medical practitioner or practitioners, for the payment of such fees or remuneration, and such treasurer is hereby required and commanded to pay the sum of money mentioned in such order of the coroner, to the medical witness therein mentioned, out of any funds he may then have in the county treasury.

§ 8. That where any order for the attendance of any medical practitioner as aforesaid, shall have been personally served upon such practitioner, or where any such order not personally served shall have been received by any medical practitioner as aforesaid, or left at his residence in sufficient time for him to have obeyed such order, and in every case where such medical practitioner has not obeyed such order, he shall for such neglect or disobedience forfeit the sum of £10, upon complaint made thereof by the coroner or any two of the jury holding such inquest, before any two justices of the peace of the county where the inquest was held, or the county where such medical practitioner resides; and such two justices are hereby required, upon such complaint, to proceed to the hearing and adjudication of the same; and if such medical practitioner shall not shew to the said justices a good and sufficient reason for not having obeyed such order, to enforce the said penalty by distress and sale of the offender's goods, as they are empow-

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owed to proceed by any statute for the summary enforcement of any penalty or forfeiture,

§ 2. That this act shall be in force in Upper Canada.

*Schedule to which this Act refers.*

Coroner's Inquest at —, upon the body of —. By virtue of this my order, as coroner for —, you are required to appear before me and the jury, at —, on the — day of —, at — o'clock, to give evidence touching the cause of death of —, (and then add, when the witness is required to make or assist at a post mortem examination,) and make or assist in making a post mortem examination of the body, with (or without) an analysis, (as the case may be), and report thereon at the said inquest.

(Signed)

Coroner.

*Of discharging the Coroner, and for what misdemeanors punished.*

The coroner in this province holds his office during her Majesty's pleasure, and is therefore removable at any time upon just cause shewn.

By stat. 3 H. VII. "If any coroner be remiss, and make not inquisition upon the view of the body slain or murdered, he shall forfeit for every default 100s."

And by 1 H. VIII. it is enacted "that if any coroner shall not endeavour himself to do his office upon any person dead by misadventure, he shall forfeit 40s."

Also, by 3 H. VII. it is enacted "that if any coroner do not certify his inquisition, he shall forfeit 100s."

He is to return his inquisition at the next gaol delivery; and because he did not, the court discharged him, and set a fine of £100.—*R. v. Ld. Buckhurst, Keb. 208, Pl. 81.*

By stat. 25 G. II. "If any coroner, who is not appointed by virtue of an annual election or nomination, or whose office of coroner is not annexed to any other office, shall be lawfully convicted of extortion, or wilful neglect of his duty, or misdemeanor in his office, it shall be lawful for the court before whom he shall be convicted, to adjudge, that he shall be removed from his office."

This statute is only in furtherance of the powers which before existed for their removal.

By stat. 1 H. VIII. justices of assize, and justices of peace within the county, have power to inquire of, and punish the defaults of coroners.

*Proceedings by the Coroner.*

When the coroner receives notice of a violent death, casualty, or misadventure, which regularly ought to be given from the

peace officer of the parish, place or township, where the body lies dead, he is then to issue his precept, or warrant, to summon a jury to appear at a particular time and place named, to enquire when, how, and by what means the deceased came by his death; which warrant is directed to the peace officers of the parish, place or precinct, where the party lies dead.

*Form of the Warrant.*

County of —, } To the constables and peace officers of the township  
to wit. } of —, in the county of —.

By virtue of my office, these are in her Majesty's name to charge and command you, that on sight hereof, you summon and warn twenty-four able and sufficient men of your township, personally to be and appear before me, on — the — day of — at — o'clock in the forenoon of the same day, at the house of A. B., called or known by the name or sign of the —, situate in the said township, then and there to do and execute all such things that shall be given them in charge, on behalf of our sovereign lady the Queen, touching the death of R. F., and for so doing, this shall be your sufficient warrant; and that you also attend at the time and place above mentioned, to make a return of the names of the persons whom you shall have so summoned, and further, to do and execute such other matters as shall be then and there enjoined you. And have you then and there this warrant. Given under my hand and seal, this — day of — 18—

G. H. (L. S.)

*Coroner.*

If there be not sufficient jurors in the place, the coroner may summon them from the adjoining township or parish.—*Impey, 512.*

The coroner shall furnish a sufficient number of blank summonses to the constable, for service by him upon the jurors, pursuant to the above warrant.

*Form of the Summons.*

County of —, } To R. M. of the township of —, in the county of  
to wit. } —, yeoman.

By virtue of a warrant, under the hand and seal of G. H., gentleman, one of her Majesty's coroners for the said county, you are hereby summoned to be and appear before him as a jurymen, on the — day of — at — of the clock in the forenoon of the same day, at the house of — known by the sign of the — in the township of — in the said county, then and there to inquire in her Majesty's name touching the death of R. F., and further to do and execute such other matters and things as shall be then and there given you in charge, and not to depart without leave. Herein fail not, at your peril. Dated the — day of — 18—

E. F., Constable.

On the day appointed, the coroner attends, and having received the return of the jurors, and precept, &c., the first

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thing he does, is to direct the officer to open the court by proclamation, viz., by proclaiming "Oyez" three times, and to repeat after him as follows:—

"You, good men of this county, summoned to appear here this day, to inquire for our sovereign lady the Queen, when, how and by what means R. F. came to his death, answer to your names as you shall be called, every man at the first call, upon the pain and peril that shall fall thereon."

The coroner then proceeds to call over the jury by name, marking the names of such as appear in the list. There must be twelve at the least to constitute a jury, but it is usual to swear thirteen or more; the jurors then proceed to choose their foreman; when done, he is called to the book and sworn first, the coroner at the same time saying to the rest of the jurors, "Gentlemen, hearken to your foreman's oath: for the oath he is to take on his part you are severally to observe and keep on your part."

#### *Foreman's Oath.*

"You shall diligently inquire and true presentment make of all such matters and things as shall be here given you in charge on behalf of our sovereign lady the Queen, touching the death of R. F. now lying dead, of whose body you shall have the view; you shall present no man for hatred, malice, or ill will, nor spare any through fear, favour or affection; but a true verdict give according to the evidence. So help you God."

The rest of the jurors are then sworn thus, four at a time:—

"The same oath your foreman has taken on his part, you and each of you are severally well and truly to observe and keep on your parts."  
"So help you God."

After they are sworn it is usual for the coroner to give a charge acquainting them with the purpose of the meeting, as thus:—

"Gentlemen, you are sworn to inquire on behalf of the Queen, how and by what means R. F. came to his death; your duty is to take a view of the body of the deceased, wherein you will be careful to observe if there be any marks of violence thereon, from which and on the examination of the witnesses intended to be produced before you, you will endeavour to discover the cause of his death, so as to be able to return me a true verdict on this occasion."

When the charge is finished the coroner goes with the jury to take a view, and examine the body of the deceased. As soon as the view is taken it is usual for the coroner again to call them over, and add to his former charge some necessary observations he has made on view of the body; and add, "that he shall now proceed to hear and take down the evidence respecting the fact, to which he must crave their particular attention." Particular charges are not necessary but in par-

ticular cases arising from the fact or in the course of the evidence, such as lunacy, *felo de se*, deodand, flight, forfeiture, &c. The deodand requires no other charge than of a value to be put upon what caused the death, and of whose property and in whose possession. As to the particular charge in case of a flight, which induces a forfeiture, where the party charged is not forthcoming, it may be necessary to add something to the general charge, as thus :—

"Your charge will be further to inquire in what degree the party charged is guilty, whether of murder or manslaughter, or of a killing in his own defence; if you find him guilty of murder or manslaughter, you are then to inquire what goods and chattels, lands or tenements he had at the time of the act committed or at any time since; if you find the fact to be of a justifiable homicide, from inevitable necessity, or in defence of his own person, life, or property, or where a suspected person doth fly and resist the proper officer, and is from necessity slain because he could not be otherwise taken: this flight and resistance presumes a guilt, and will incur a forfeiture; and therefore you are to inquire whether, in either of the instances the party fled for it, this is a presumptive confession of the charge; and you are then to inquire of his goods and chattels, but not lands or tenements, in the same manner as if you had found him guilty."

The latter charge may be given after the evidence taken, so as to have a perfect verdict.

If the inquiry be of the death of one man by another, and it be doubtful whether the wound be mortal or not, a surgeon should be present to examine and shew the wound.

After the general charge is given by the coroner, the officer then calls silence, and repeats after the coroner thus :—

"If any one can give evidence on behalf of our sovereign lady the Queen, when, how and by what means R. F. came to his death, let them come forth and they shall be heard."

The witness appearing, the coroner takes down his name, place of abode and occupation, and then the officer tenders to him the following oath :—

"The evidence you shall give to this inquest on behalf of our sovereign lady the Queen, touching the death of R. F., shall be the truth, the whole truth, and nothing but the truth. So help you God."

The evidence should be taken down in writing, and as nearly as possible in the words of the witness.

The examinations should be entitled thus :—

County of — } Informations of witnesses severally taken and acknowledged to wit. } ledged on the behalf of our sovereign lady the Queen, touching the death of R. F., at the dwelling house of J. B., known by the name or sign of the —, in the township of —, in the county of —, on the — day of —, in the — year of the

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reign of our sovereign lady Queen Victoria, &c., before G. H., Esquire, one of the coroners of the said county, on an inquisition then and there taken on view of the body of the said R. F. then and there lying dead, as follows, to wit:—

A. B., of the township of —, in the said county, yeoman, being sworn, saith, &c.

Before the witness signs his examination it should be read over to him, and he should be asked "if that is the whole of the evidence he can give." He then signs it to the right hand of the paper. The coroner generally asks the jurors before the witness signs, whether they have any questions for him to ask the witness; and if any be asked, and the answer prove material, it should be added to the deposition. When the witness has signed his name to the examination taken, the coroner writes thus, to the left hand side: "taken and acknowledged the day, year, and at the place above mentioned, before G. H., coroner;" or if there are several witnesses, then at the end of the last information, thus, "all the above informations were severally taken and acknowledged on the day and year and at the place first above mentioned, before G. H., coroner."

If the evidence be not all taken, the coroner may adjourn the jury to another day, to the same or another place, to take and receive other evidence, first binding the jurors in a recognizance to appear at the adjournment, thus:—

"Gentlemen, you acknowledge yourselves severally to owe to our sovereign lady the Queen, the sum of ten pounds, to be levied on your goods and chattels for her Majesty's use, *upon condition* that you and each of you do personally appear here again (or other appointed place) on — the — day of — instant, at — of the clock in the forenoon precisely, then and there to make further inquiry on behalf of our said lady the Queen, touching the death of the said R. F., of whose body you have already had the view. Are you all content?"

The coroner then adjourns the court, thus:—

Gentlemen, the court doth dismiss you for this time: but requires you severally to appear here again (or at the adjourned place) on — the — day of — instant, at — of the clock in the forenoon precisely, upon pain of £10 a man, on the condition contained in your recognizance entered into.

The coroner may in his discretion grant his warrant to bury the body of the deceased to prevent infection. Then the officer adjourns the court by making proclamation, thus:—

"Oyes! oyes! oyes! all manner of persons who have anything more to do at this court before the Queen's coroner for this county, may depart hence and give their attendance here again (*or other adjourned place*) on — the — day of — instant, at — of the clock in the forenoon precisely. God save the Queen."

The coroner will make a proper entry in his minutes of the recognizance and the adjournment, &c.

When the jury are met at the adjourned time and place, the officer opens the court by proclamation as in the first instance, p. 213, with this addition:—

"And you, gentlemen of the jury, who have been empannelled and sworn on this inquest to inquire touching the death of R. F., severally answer to your names, and save your recognizance."

If foreigners are examined as witnesses, the coroner is to have an interpreter, who is to be sworn, thus:—

"You shall well and truly interpret unto the several witnesses here produced on behalf of our sovereign lady the Queen, touching the death of R. F., the oath that shall be administered to them, and also the questions and demands which shall be made to the witnesses by the court or jury, concerning the matters of this inquiry, and you shall well and truly interpret the answers which the witnesses shall thereunto give. *So help you God.*"

He then interprets the oath which is given in p. 213.

After the additional evidence has been taken down in writing and subscribed by the witnesses, the coroner then sums up the whole of the evidence to the jury, at the same time explaining to them the law upon the case when necessary. He then desires the jury to consider their verdict. If they withdraw to consider their verdict, the officer is sworn to take care of them, thus:—

"You shall well and truly keep the jury upon this inquiry without meat, drink, or fire: you shall not suffer any person to speak to them, nor you yourself, unless it be to ask them whether they be agreed to their verdict, until they shall be agreed. *So help you God.*"

The officer takes them to a convenient room, and attends the door on the outside until they are agreed; when agreed, they return, and the coroner calls over their names, and afterwards asks them if they be agreed in their verdict; if the foreman replies in the affirmative, the coroner asks them "who shall say for you?" to which they reply "our foreman." Then the coroner says, "Mr. Foreman, how do you find that R. F. came to his death, and by what means?" The foreman then delivers the verdict, which the coroner records.

It seems that twelve at least must agree if there be no division; but if there be a division, the coroner then collects their voices, beginning with the last on the panel and rising up towards the foreman, who declares last. The coroner collects the numbers and declares the majority into which the minority sinks, and the finding (which is to be given by the foreman) is from necessity, taken and considered, as the verdict of all. When the verdict is given, the coroner then draws up his in-

sition in each of names of office "

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&c. And a true bill appear and said C. D. dictment a then if they said session to the jury tion taken on the view without les in full force me G. H.

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sition in form, and at the foot affixes a seal for himself and each of the jurymen. The coroner and jurors then sign their names opposite the seals; to the coroner's name he adds "the office" thus, G. H. "*coroner.*"

The inquisition being thus completed, the coroner then addresses the jury as follows:—

"Gentlemen, hearken to your verdict, as delivered by you, and as I have recorded it. You find, &c." (*Here repeat the substance of the verdict.*)

If it is a case that will come to the assizes, the coroner binds all proper persons over in a recognizance to appear and give evidence, with the following condition:

"The condition of this recognizance is such, that if the above bounden J. R., E. D. and G. B. do severally appear at the next session of general gaol delivery to be holden in and for the said county, and then and there give evidence upon a bill of indictment to be then and there preferred to the grand jury against C. D., late of the township of — in said county, labourer, for the wilful murder of R. F. late of — &c. And in case the said bill of indictment be found by the grand jury a true bill, then if they the said J. R., E. D. and G. B. do severally appear and give evidence to the jury that shall pass on the trial of the said C. D. upon the said indictment: and in case the said bill of indictment shall be returned by the grand jury aforesaid "not found," then if they the said J. R., E. D. and G. B. do severally appear at the said session of general gaol delivery, and then and there give evidence to the jury that shall pass on the trial of the said C. D. upon an inquisition taken before me, one of her Majesty's coroners for the said county, on the view of the body of the said R. F., and not depart the court without leave, then this recognizance to be void, otherwise to remain in full force. Taken and acknowledged this — day of — before me G. H. — coroner.

If one of the witnesses be a married woman, and the husband not present to enter into a recognizance for her, she is not to be bound in any sum penal, but "on pain of imprisonment," thus: S. the wife of J. S. of &c., labourer, on pain of imprisonment, in case she shall make default in such condition; if the husband be present he is to be bound for the appearance of his wife; and if the witness happen to be an infant, (or minor under the age of twenty-one years) the parent or master should be bound in a recognizance for his appearance.

#### *Form of a Recognizance by Husband and Wife.*

County of — } Be it remembered that J. P. of the township of —  
to wit, } in the county of —, yeoman, and E. P., his wife,  
severally acknowledged themselves to be bound by recognizance to our  
sovereign lady the Queen, as follows, that is to say, the said J. P. in the  
sum of £20 of lawful money of the province of Canada, to be  
levied on his goods and chattels, lands and tenements, and the said

E. P. his wife, on pain of imprisonment in case default shall be made in the condition following:—The condition of this recognizance is such, that if the said R. P., the wife of the said J. P., do and shall personally appear, &c. (*as in the former Recognizance.*)

The above form will also do for an infant and his parent or master.

The officer of the court then makes proclamation thus:—  
“You good men of this township, who have been empannelled and sworn of the jury to inquire for our sovereign lady the Queen, touching the death of R. F., and who have returned your verdict, may depart hence and take your ease. God save the Queen.”

When the coroner returns his inquisition to the sessions, he first engrosses it on parchment, indented at the top, and in words at length, and such return is to be made under his hand and seal only, with the name of his office.—*Umfrev.* 312.

The following forms of inquisitions, summonses, warrants, &c. are transcribed from *Impey's Office of Coroner.*

*Form of an Inquisition on a Lunatic.*

County of — } An inquisition indented, taken for our sovereign  
to wit. } lady the Queen, at the township of — in the  
county of — the — day of — in the — year of the reign of our  
sovereign lady Queen Victoria, &c., before G. H., gentleman, one of  
the coroners of our said lady the Queen for the said county, on view  
of the body of R. F., then and there lying dead, upon the oath of A.  
B., &c., (*here insert the names of all the jurors sworn.*) good and law-  
ful men of the said township, duly chosen, and who being then and  
there duly sworn and charged to inquire for our said lady the Queen,  
when, where, how, and after what manner, the said R. F. came to his  
death, do, upon their oath, say, that the said R. F. not being of sound  
mind, memory and understanding, but lunatic and distracted, on the  
— day of — in the year aforesaid, at the township aforesaid, in the  
county aforesaid, to wit, into the river Humber there, did cast and throw  
himself, by means of which said casting and throwing, he the said R. F.,  
in the waters of the said river was then and there suffocated and drowned;  
of which said suffocation and drowning, he the said R. F. then and  
there instantly died; and so the jurors aforesaid, upon their oath aforesaid,  
do say, that the said R. F., in manner and by the means aforesaid,  
not being of sound mind, memory, and understanding, but lunatic and  
distracted, did drown and kill himself. In witness whereof, as well the  
said coroner as the jurors aforesaid, have to this inquisition set their  
hands and seals, on the day and year, and at the place first above  
mentioned.

G. H. Coroner, [L. S.]

A. B. [L. S.]

C. D. [L. S.]

E. F. [L. S.]

&c.

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*Felo de se, by Drowning.*

That the said R. F., not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil, on — with force and arms, at the township aforesaid, in the county aforesaid, in and upon himself, in the peace of God, and of our said lady the Queen, then and there being, feloniously, wilfully, and of his malice aforethought, did make an assault, and that the said R. F. into a certain river or stream of water, commonly called — at the township aforesaid, in the county aforesaid, did violently cast and throw himself, by means of which said casting and throwing, he, the said R. F., in the waters of the said river, was then and there suffocated and drowned, of which said suffocation and drowning, he the said R. F. then and there instantly died. And so the jurors aforesaid, upon their oath aforesaid, do say, that the said R. F. in manner and by the means aforesaid, feloniously, wilfully, and of his malice aforethought, did kill and murder himself, against the peace of our said lady the Queen, her crown and dignity;— and that the said R. F., at the time of the said felony and murder, so as aforesaid done and committed, had no goods or chattels, lands or tenements, within the said county, or elsewhere, to the knowledge of the said jurors;—(or that the said R. F. at the time of the doing and committing of the felony and murder aforesaid, had goods and chattels contained in the inventory to this inquisition annexed, which remain in the custody of C. D. who claims the same.) In witness, &c.

*Upon an Accidental Death occasioned by a Cart.*

That W. C. late of the township aforesaid, in the county aforesaid, carman, on — at the township aforesaid, in the county aforesaid, in a certain public street or highway, there called —, being negligently driving a certain cart, drawn by one horse, and loaded with twelve barrels of flour; it so happened, that the said A. P. being in the street and highway aforesaid, was then and there accidentally, casually, and by misfortune, forced to the ground by the horse so drawing the said cart as aforesaid, and the said cart so loaded as aforesaid, was then and there, by the said horse violently and forcibly drawn to and against the said A. P., and the wheel of the said cart, so drawn and loaded as aforesaid, did then and there accidentally, casually and by misfortune, violently go upon, and pass over the breast and body of the said A. P., by means whereof, the said A. P., from the weight and pressure of the said cart, so loaded and drawn as aforesaid, did then and there receive one mortal bruise in and upon his said breast and body, of which said mortal bruise, he the said A. P. then and there instantly died; and so the jurors aforesaid, upon their oath aforesaid, do say, that the said A. P., in manner and by the means aforesaid, accidentally, casually, and by misfortune, came to his death, and not otherwise; and that the said horse, cart, and loading were the cause of the death of the said A. P., and that the said twelve barrels of flour are of the value of — the said cart of the value of — and the said horse of the value of — amounting in the whole, to the sum of — of lawful money of the province of Canada, and are the property and in the possession of D. E. of — yeoman, or of his assigns. In witness, &c.

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If it be intended to impose a nominal fine or deodand only, then say,

"And that the said horse, cart, and loading are of the value of five shillings of lawful money, &c." (as before.)

**By a Fire.**—That on — at, &c., the warehouse of C. D., situate in the same township and county, casually took fire, and the said A. B. being then and there present, aiding and assisting to extinguish the said fire; it so happened, that a piece of timber, by the force and violence of the said fire, then and there accidentally, casually, and by misfortune, fell from the top of the said warehouse, in and upon the head of him, the said A. B. by reason whereof, he the said A. B. then and there received a mortal fracture on the head of him, the said A. B., of which said mortal fracture, he, the said A. B., from the said — day of — in the year aforesaid, until the — day of — in the year aforesaid, there did languish and languishing did live; on which said — day of — in the year aforesaid, at the township aforesaid, in the county aforesaid, he, the said A. B., of the mortal fracture aforesaid, did die. And so the jurors aforesaid, &c., and that the said piece of timber was the occasion of the death of the said A. B., and is of no value: (or is of the value of, &c.,) and in the possession, &c. In witness, &c.

**By Drowning.**—That the said A. B. on — aforesaid, in a certain river, called — at the township, and in the county aforesaid, accidentally, casually, and by misfortune, was in the waters of the said river, then and there suffocated and drowned; of which said suffocation and drowning, he the said A. B. then and there instantly died. And so the jurors, &c.

**Natural Death.**—That the said A. B., on — and for a long time before, at, &c., did labour and languish under a grievous disease of body, to wit, an asthma; and that on the said — day of — in the year aforesaid, at, &c., she the said A. B. departed this life, by the visitation of God, in a natural way, to wit, of the disease and distemper aforesaid, and not by any hurt or injury received from any person, to the knowledge of the said jurors. In witness, &c.

**Found Dead.**—That the said A. B. on, &c., at, &c., in a certain brick-field, in the possession of one C. D. was found dead. That he the said A. B. for some time before, had been very ailing and infirm, and not able to work: that he had no marks of violence appearing on his body, and departed this life by the visitation of God, in a natural way, to wit, of his said ailment and infirmity, and not by any violent means whatsoever, to the knowledge of the said jurors. In witness, &c.

**Stranger found Dead.**—That the said man, unknown, on, &c., at, &c., to wit, in a certain wood, there called the long wood, was found dead. That the said man, unknown, had no marks of violence appearing on his body; but how, or by what means he came to his death, no evidence thereof doth appear to the said jurors. In witness, &c.

**By Excessive Drinking.**—That the said A. B. on, &c., at, &c., departed this life by excessive drinking of ardent spirits, and not from any hurt, injury or violence done or committed by any person or per-

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sons whatsoever, to the knowledge of the said jurors. In witness, &c.

*Inclemency of the Weather.*—That the said man, unknown, was found dead in a certain lane, situated in the said township, commonly called —, that the said man, unknown, had no marks of violence appearing on his body, but died through want and the inclemency of the weather, and by no violent ways or means whatsoever, to the knowledge of the said jurors. In witness, &c.

*Death in Prison.*—That the said A. B. being a prisoner for debt in the gaol of —, at &c., in the gaol aforsaid, departed this life by the visitation of God, in a natural way, to wit, of a fever, and not otherwise. In witness, &c.

*Falling out of a Boat.*—That the said C. D. on &c., being in a certain boat, with a certain sail and oars, the property of him, the said C. D., at &c., it so happened, that by the violence of the wind and waves, the said boat was then and there accidentally, casually, and by misfortune upset, by means whereof the said C. D. was then and there accidentally, casually, and by misfortune, cast and thrown into the waters of the said river, and in the waters of the said river was then and there suffocated and drowned, of which said suffocation and drowning, he the said C. D. then and there died. And so the jurors, &c., and that the said boat, and the sail and oars thereof, did occasion the death of the said C. D., and are of the value of 10s., and in the possession of —, or his assigns. In witness, &c.

*Murder.*—That C. D., late of, &c., labourer, not having the fear of God before his eyes, but moved and seduced by the instigation of the devil, on, &c., with force and arms, at &c., in and upon the said A. B. in the peace of God, and of our said lady the Queen, then and there being, feloniously, *wilfully and of his malice aforethought*, did make an assault, and that the said C. D. with a certain iron poker of the value of 1s., which the said C. D. then and there had and held in both his hands, him the said A. B., in and upon the head of him the said A. B., then and there, divers times, feloniously, *wilfully and of his malice aforethought*, did strike and beat, then and there giving unto him, the said A. B. in and upon the back part of the head of him, the said A. B. with the iron poker aforsaid, one mortal fracture of the length of two inches, of which said mortal fracture, he the said A. B. then and there instantly died. And so the jurors aforsaid, upon their oath aforsaid, do say, that the said C. D. him, the said A. B. in manner, and by the means aforsaid, feloniously, *wilfully, and of his malice aforethought*, did kill and murder, against the peace of our lady the Queen, her crown and dignity, and that the said C. D. after the doing and committing of the said felony and murder aforsaid, withdrew and fled for the same, and that neither at the time of the doing and committing thereof, nor at any time since, he the said C. D. had any goods or chattels, lands or tenements within the said county or elsewhere, to the knowledge of the said jurors. In witness, &c.

*Man-slaughter.*—The form is precisely the same, except that the words "wilfully and of his malice aforethought," are to be left out, and

the words "feloniously did kill and slay," substituted for "kill and murder," and the word "manslaughter," for "murder," in another part.—See the parts marked with brackets.

*Se defendendo.*

That on the — day of — in the year aforesaid, at the township aforesaid, in the county aforesaid, the said A. B. being in a certain common drinking room belonging to a public house there situate, known by the name or sign of —, in which said common drinking room one C. D., late of the township aforesaid, in the county aforesaid, labourer, and divers other persons was and were then and there present; and that the said A. B. without any cause or provocation whatsoever given by the said C. D., did then and there menace and threaten the said C. D. to turn him the said C. D. out of the said common drinking room, and for that purpose did then and there lay hold of the person of him the said C. D., and on him the said C. D., in the peace of God and of our said lady the Queen then and there being, violently did make an assault, and him the said C. D., without any cause or provocation whatsoever, did then and there beat, abuse and evilly entreat, whereupon the said C. D. for the preservation and safety of his person and of inevitable necessity, did then and there with the hands of him the said C. D. defend himself against such the violent assault of him the said A. B. as it was lawful for him to do; and the said A. B. did then and there receive, against the will of him the said C. D., by the falls and blows which he the said A. B. then and there sustained by him the said C. D.'s so defending himself as aforesaid, divers mortal bruises, in and upon the head, back and loins of him the said A. B., of which said mortal bruises he the said A. B. from the said — day of —, in the year aforesaid, until the — day of the same month in the same year, at the township aforesaid, in the county aforesaid, did languish &c., (as in a former precedent); and so the jurors aforesaid, upon their oath aforesaid, do say that the said C. D. him the said A. B. in the defence of himself the said C. D. in manner and by the means aforesaid, did kill and slay: but what goods or chattels the said C. D. had at the time of the doing and committing the said manslaughter in his own defence as aforesaid, the said jurors know not. In witness &c.

*By suffocating a Bastard.*—That A. B. late of &c.—, single woman, on &c.— being then and there big with a female child, afterwards, to wit, on the same day and year, at the township aforesaid, in the county aforesaid, the said female child, alone and secretly from her body, by the providence of God, did bring forth alive, which said female child by the laws of this province was a bastard; and that the said A. B. not having the fear of God, &c., [as before], afterwards, to wit, on the same day and year aforesaid, with force and arms, at the township aforesaid, in the county aforesaid, in and upon the said new-born female bastard child so alive, and in the peace of God and of our said lady the Queen then and there being, feloniously, wilfully, and of her malice aforethought, did make an assault, and that the said A. B., her the said new-born female bastard child with both her hands, in a certain linen cloth of no value, then and there feloniously, wilfully and of her ma-

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lice aforethought, did wrap up and fold, by means of which said wrapping up and folding of her the said new-born female bastard child, in the linen cloth aforesaid, she the said new-born female bastard child was then and there suffocated and smothered, of which said suffocation and smothering she the said new-born female bastard child then and there instantly died; and so the jurors aforesaid, upon their oath aforesaid, do say that the said A. B. her, the said new-born female bastard child, in manner and by the means aforesaid, feloniously, wilfully and of her malice aforethought, did kill and murder, against the peace of our lady the Queen her crown and dignity, [flight, forfeiture,—as before]. In witness, &c.

*By throwing down a Privy.*—And that the said A. B. him, the said new-born male child, did then and there take into both her hands, and him the said new-born male child into a certain privy, or necessary house, there situate, then and there feloniously, wilfully and of her malice aforethought, did violently cast and throw down, by means whereof he, the said new-born male child, in the soil or filth then and there contained in the said privy or necessary house, was then and there suffocated and smothered, of which said suffocation and smothering he the said new-born male child then and there instantly died; and so the jurors, &c. [as before] [flight, forfeiture—as before]. In witness, &c.

*Against aiders and abettors, in murder or manslaughter.*—And the jurors aforesaid, upon their oath aforesaid, do further say that S. W. late of &c. — labourer, and G. W., late of the same place, labourer, at the time of the doing and committing of the felony and murder, (or felony and manslaughter) aforesaid, were present, aiding, abetting, assisting, comforting and maintaining the said C. D. to kill and murder (or kill and slay) the said A. B., in manner aforesaid; and so the jurors aforesaid, upon their oath aforesaid, do say that the said C. D. and E. F. him, the said A. B., in manner and by the means aforesaid, feloniously, wilfully and of their malice aforethought, did kill and murder, (and in cases of manslaughter say, feloniously did kill and slay), against the peace, &c., (conclude with flight and forfeiture). In witness, &c.

*Form of the Warrant to Summon a Jury.*

County of — } To the constables of the township of —, in the  
to wit. } county of —, and others her Majesty's officers  
of the peace in and for the said county.

By virtue of my office, these are in her Majesty's name to charge and command you, that on sight hereof you summon and warn twenty-four able and sufficient men of your township, personally to be and appear before me, on — the — day of — at — o'clock in the forenoon, at the house of A. B. called or known by the name or sign of the — situate at — in the said township, then and there to do and execute all such things that shall be given them in charge on behalf of our sovereign lady the Queen's Majesty, touching the death of E. F., and for so doing this shall be your sufficient warrant: and that you also attend at the time and place above mentioned, to make a

return of the names of the persons whom you have so summoned, and further to do and execute such other matters as shall be then and there enjoined you, and have you then there this warrant. Given under my hand and seal, this — day of — 18—. G. H., Coroner.

N. B.—The Coroner should furnish a sufficient number of printed or written summonses to the constable for service on the Jurors.

#### Form of the Constable's Summons.

County of — } By virtue of a warrant under the hand and seal of  
to wit. } G. H., gentleman, one of her Majesty's coroners  
for this county, you are hereby summoned personally to be and appear  
before him as a juryman, on the — day of — at — of the clock  
in the forenoon, precisely, at the house of — known by the sign of  
the — in the township of — in the said county, then and there to  
inquire in her Majesty's behalf, touching the death of R. F., and further  
to do and execute such other matters and things as shall be then and  
there given you in charge, and not to depart without leave. Herein  
fail not at your peril. Dated the — day of — in the year of our  
Lord 18—. Constable.

#### Warrant to Bury after a View.

County of — } To the minister and churchwardens of the township  
to wit. } of —, in the county of —, and to all others  
whom it may concern.

Whereas I, with my inquest, the day and year hereunder written, have taken a view of the body of J. D., who not being of sound mind, memory and understanding, but lunatic and distracted, shot himself, (or agreeably to the finding of the jury), who now lies dead in your township, and have proceeded therein according to law. These are therefore to certify that you may lawfully permit the body of the said J. D. to be buried: and for so doing this shall be your warrant. Given under my hand and seal the — day of —.

G. H. Coroner.

#### Warrant to Bury a *felo de se*, after Inquisition found.

County of — } To the churchwardens and constables of the town-  
to wit. } ship of —, in the county of —.

Whereas by an inquisition taken before me, one of her Majesty's coroners for the said county, this — day of —, in the — year of the reign of her present Majesty Queen Victoria, at the township of —, in the said county, on view of the body of J. D., then and there lying dead, the jurors in the said inquisition named have found that the said J. D. feloniously, wilfully and of his malice aforethought killed and murdered himself (as the finding may be); these are therefore, by virtue of my office, to will and require you forthwith to cause the body of the said J. D. to be buried according to law; and for your so doing this is your warrant. Given under my hand and seal this — day of —.

G. H. Coroner.

N. B. The last form of warrant should not be directed to the minister.

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*The Return thereto.*

By virtue of the within warrant to us directed, we have caused the body within named to be buried according to law:

C. D. }  
E. F. } *Churchwardens,*  
I. D. *Constable.*

*Warrant to Bury without a View, where no effectual Inquest can be taken,*

County of —, } To the minister and churchwardens in the township  
to wit. } of —, in the county of —.

Whereas I am credibly informed that on the — day of —, the body of a new born male child was found dead in a coffin, in the churchyard of the said township, and that there is not any evidence to be found to make appear to a jury either by what means the said male child was there laid, or who was the mother thereof, or how it came to his death, nor are there any marks of violence appearing on its body. These are therefore to certify that in ease of the county charge you may permit the body of the said new born male child to be buried: and for so doing this is your warrant. Given under my hand and seal this — day of —.

G. H. Coroner.

*Another form of Warrant to Bury without a View.*

County of —, } To the minister and churchwardens of the township  
to wit. } of —, in the county of —.

Whereas I am credibly informed, that on the — day of — instant, A. B. died suddenly in the street, to wit, (*name the street*) in the township of —, in the said county, as supposed by a fit of an apoplexy or other sudden visitation of God, and that he came not to his death by any violent means or manner whatsoever. These are therefore to certify that in ease of the county charge you may permit the body of the said A. B. to be buried: and for so doing this shall be your warrant. Given under my hand and seal this — day of —.

G. H. Coroner.

*Warrant to Bury without a View, when the Body was found Drowned.*

County of —, } To the minister and churchwardens of the township  
to wit. } of —, in the county of —.

Whereas I am credibly informed that on the — day of — the body of a man unknown was taken up dead, and floating in the river —, in the township of —, in the said county, and that no marks of violence do appear on the body of the said man unknown; and whereas there is no evidence to make appear to a jury how or by what means the said man unknown came to his death. These are therefore to certify that in ease of the county charge you may permit the body of the said man unknown to be buried: and for so doing this is your warrant. Given under my hand and seal, this — day of —.

G. H. Coroner.

*Warrant to take up a Body interred.*

County of —, } To the minister and churchwardens of the township  
to wit. } of —, in the county of —.

Whereas, complaint hath been made unto me, one of her Majesty's coroners for the said county, on the — day of — that the body of one G. R. was privately and secretly buried in your township, and that the said G. R. died not of a natural, but violent death : and whereas no notice of the violent death of the said G. R. hath been given to any of her Majesty's coroners for the said county, whereby, on her Majesty's behalf, an inquisition might have been taken on view of the body of the said G. R. before his interment, as by law is required. These are therefore, by virtue of my office, in her Majesty's name to charge and command you, that you forthwith cause the body of the said G. R. to be taken up and safely conveyed to — in the said township, that I with my inquest, may have a view thereof, and proceed therein according to law. Herein fail not, as you will answer the contrary at your peril. Given under my hand and seal, the — day of —.

G. H. Coroner.

*Warrant to Apprehend a Person for Murder.*

County of —, } To the constables of the township of —, in the  
to wit. } county of —, and to all others, her Majesty's  
peace officers in the said county.

Whereas, by an inquisition taken before me —, one of her Majesty's coroners for the said county, this — day of —, at —, in the said county, on view of the body of G. R., then and there lying dead, one C. D., late of —, in the said county, labourer, stands charged with the wilful murder of the said G. R., these are therefore, by virtue of my office, in her Majesty's name, to charge and command you, and every of you, that you some or one of you, without delay, do apprehend and bring before me — the said coroner, or one of her Majesty's justices of the peace of the said county, the body of the said C. D., of whom you shall have notice, that he may be dealt with according to law. And for your so doing, this is your warrant. Given under my hand and seal, this — day of —.

G. H., Coroner.

*Commitment for Murder.*

County of —, } To the constables of the township of —, in the  
to wit. } county of —, and other her Majesty's officers of  
the peace for the said county, and to the keeper  
of her Majesty's gaol, at —, in the said county.

Whereas, by an inquisition taken before me, one of her Majesty's coroners for the said county, the day and year hereunder mentioned, on view of the body of R. L., lying dead in the said township of —, in the county aforesaid, J. K., late of the township of —, in the said county, labourer, stands charged with the wilful murder of the said R. L. These are therefore, by virtue of my office, in her Majesty's name to charge and command you, the said constables and others aforesaid, or any of you, forthwith safely to convey the body of the said J. K. to her Majesty's gaol at — aforesaid, and safely to deliver him to the keeper of the said gaol; and these are likewise by virtue of my said office, in her Majesty's name, to will and require you, the said keeper,

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to receive the body of the said J. K. into your custody, and him safely to keep in the said gaol, until he shall be thence discharged by due course of law, and for your so doing this shall be your warrant. Given under my hand and seal, the — day of —.

G. H. Coroner.

*Summons to a Witness.*

County of —, } To A. P., of the township of —, in the county of  
to wit. } —, yeoman.

Whereas I am credibly informed that you can give evidence on behalf of our sovereign lady the Queen touching the death of A. P., now lying dead in the township of —, in the said county. These are therefore, by virtue of my office, in her Majesty's name to charge and command you personally to be and appear before me, at the dwelling-house of J. R., known by the sign of —, situate at —, in the said township, at — o'clock in the forenoon, on the — day of — instant, then and there to give evidence and be examined on her Majesty's behalf before me and my inquest touching the premises: herein fail not, as you will answer the contrary at your peril. Given under my hand and seal this — day of —.

G. H. Coroner.

*Warrant for Contempt against a Witness for not appearing to give Evidence.*

County of —, } To the constables of the township of —, in the  
to wit. } county, of — and to all other her Majesty's  
officers of the peace in and for the same county.

Whereas I have received credible information that A. P. of the township of —, in the said county, can give evidence on behalf of our sovereign lady the Queen, touching the death of C. D., now lying dead in the said township; and whereas the said A. P. having been duly summoned to appear and give evidence before me and my inquest touching the premises, at the time and place in the said summons specified, of which oath hath been duly made before me, hath refused and neglected so to do, to the great hinderance and delay of justice. These are therefore, by virtue of my office, in her Majesty's name to charge and command you, or one of you, without delay to apprehend and bring before me, one of her Majesty's coroners for the said county, now sitting at the township aforesaid, by virtue of my said office, the body of the said C. D. that he may be dealt with according to law: and for your so doing this is your warrant. Given under my hand and seal, the — day of —.

G. H., Coroner.

*Warrant to Commit a Witness refusing to give Evidence, &c.*

County of — } To the constables of the township of — in the  
to wit. } county of —, and other her Majesty's officers of  
the peace in and for the county aforesaid, and also to the keeper of the  
gaol in the said county.

Whereas I heretofore issued my summons under my hand, directed to A. P. of &c., requiring his personal appearance before me, then and now one of her Majesty's coroners for the said county, at the time and place therein mentioned, to give evidence and be examined on

her Majesty's behalf touching and concerning the death of C. D., then and there lying dead, of the personal service of which said summons hath been duly made before me; and whereas the said A. P. having neglected and refused to appear pursuant to the contents of the said summons, I thereupon afterwards issued my warrant, under my hand and seal, in order that the said A. P. by virtue thereof, might be apprehended and brought before me to answer the premises. And whereas the said A. P. in pursuance thereof hath been apprehended and brought before me, now duly sitting by virtue of my office, and hath been duly required to give evidence and be examined before me and my inquest on her said Majesty's behalf, touching the death of the said C. D., yet the said A. P. notwithstanding, hath absolutely and wilfully refused, and still doth wilfully and absolutely refuse to give evidence and be examined touching the premises, or to give sufficient reason for his refusal, in wilful and open violation and delay of justice: these are therefore, by virtue of my office, in her Majesty's name to charge and command you, or any one of you, the said constables and officers of the peace in and for the said township and county, forthwith to convey the body of the said A. P. to the gaol of the said county, at the city of —, in the said county, and him safely to deliver to the keeper of said gaol: and these are likewise, by virtue of my said office, in her Majesty's name to will and require you, the said keeper, to receive the body of the said A. P. into your custody, and him safely to keep until he shall consent to give his evidence and be examined before me and my inquest, on her Majesty's behalf, touching the death of the said C. D., or until he shall be from thence otherwise discharged by due course of law: and for so doing this is your warrant. Given under my hand and seal, the — day of —.

G. H. Coroner.

*Commitment of a Witness for refusing to sign his Information.*

County of — } To the constables of the township of — in the  
to wit. } county of —, and other her Majesty's officers of  
the peace in and for the said county, and also to the keeper of the gaol  
of the said county.

Whereas A. B. of —, is a material witness on behalf of our sovereign lady the Queen, against J. P., late of the township of —, in the county aforesaid, labourer, now charged before me, one of her Majesty's coroners for the said county, and my inquest, with the wilful murder of C. D., there now lying dead; and whereas the said A. B. at this time of my inquiry, on view of the body of the said C. D. how and by what means he the said C. D. came by his death, hath personally appeared before me and my said inquest, and on her Majesty's behalf hath given evidence and information on oath touching the premises, which said information having by me been reduced into writing, and the contents thereof by me, in the presence of the said inquest, openly and truly read to him the said A. B., who doth acknowledge the same to be true, and that the same doth contain the full substance and effect of the evidence by him given before me to my said inquest, and the said A. B. having by me been requested and desired to sign and set his hand to his said testimony and information, and to acknowledge the

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*Commitment*

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same as by law is required, yet, notwithstanding, the said A. B. doth wilfully and absolutely refuse so to do, in open defiance of law, and to the great hinderance of public justice. These are therefore, by virtue of my office, in her Majesty's name to charge and command you, or one of you, the said constables and other her Majesty's officers of the peace in and for the said county, forthwith to convey the body of the said A. B. to the gaol of the said county, at — in the said county, and him safely to deliver to the keeper of the said gaol; and these are likewise, by virtue of my said office, in her Majesty's name to will and require you the said keeper to receive the body of the said A. B. into your custody, and him safely to keep in prison until he shall duly sign and acknowledge his said information, or shall be from thence otherwise discharged by due course of law: and for so doing this is your warrant. Given under my hand and seal, this — day of —.

G. H., Coroner.

*Commitment of a witness for refusing to enter into Recognizance to appear and give Evidence.*

County of — } To the constables of the township of —, in the  
to wit. } county of —, and other her Majesty's officers  
of the peace in and for the same county, and also to the keeper of the  
gaol of the said county.

Whereas upon an inquisition this day taken before me, one of her Majesty's coroners for the county aforesaid, at — in the said county, on view of the body of C. D. then and there lying dead, one J. U. late of the township aforesaid, in the county aforesaid, labourer, was by my inquest then and there sitting, found guilty of the wilful murder of the said C. D.; and whereas one U. P. of the township and county aforesaid, yeoman, was then and there examined and gave information in writing before me and my inquest touching the premises, and which said information he, the said U. P., then and there before me and my inquest duly signed and acknowledged, and by which said information it appears that the said U. P. is a material witness on her Majesty's behalf against the said J. U. now in custody, and charged by my inquest with the said murder, and the said U. P. having wilfully and absolutely refused to enter into the usual recognizance for his personal appearance at the next general gaol delivery to be holden in and for the county of — aforesaid, and then and there to give evidence on her Majesty's behalf against the said J. U., to the great hinderance and delay of justice. These are therefore, by virtue of my office, in her Majesty's name to charge and command you, or one of you, the said constables and other her Majesty's officers of the peace in and for the said county, forthwith to convey the body of the said U. P. to the gaol of the said county, at — in the said county, and him safely to deliver to the keeper of the said gaol there; and these are likewise by virtue of my said office in her Majesty's name to will and require you the said keeper to receive the body of the said U. P. into your custody, and him safely to keep in prison there until he shall enter into such recognizance before me, or before one of her Majesty's justices of the peace for the said county, for the purposes aforesaid, or in default thereof, until he

shall be from thence otherwise discharged by due course of law: and for so doing this is your warrant. Given under my hand and seal, this — day of — G. H. Coroner.

*Recognizance to Prosecute and give Evidence.*

County of — } Be it remembered that J. R. of &c., yeoman, and E. to wit. } D. of the same place, labourer, do severally acknowledge to owe to our sovereign lady the Queen the sum of — pounds each, of lawful money of Canada, to be levied on their several goods and chattels, lands and tenements, by way of recognizance to her Majesty's use, in case default shall happen to be made in the condition hereunder written.

The condition of this recognizance is such, that if the above bounden J. R. and E. D. do severally personally appear at the next general gaol delivery to be holden in and for the county of —, and the said J. R. shall then and there prefer, or cause to be preferred to the grand jury, a bill of indictment against C. D. late of —, labourer, and now in custody for the wilful murder of A. B. late of &c., and that the said J. R. and E. D. do then and there severally personally appear to give evidence upon such bill of indictment to the said grand jury, and in case the said bill of indictment be found by the grand jury a true bill, that then the said J. R. and E. D. do severally personally appear at the said general gaol delivery, and the said J. R. shall then and there prosecute the said C. D. on such indictment, and the said J. R. and E. D. do then and there severally give evidence to the jury that shall pass on the trial of the said C. D. touching the premises, and in case the said bill of indictment shall be returned not found, that then they do severally personally appear at the said general gaol delivery, and then and there prosecute and give evidence to the jury that shall pass on the trial of the said C. D. upon an inquisition taken before me, one of her Majesty's coroners for the said county, on view of the body of the said A. B. and not depart the court without leave, then this recognizance to be void, otherwise to remain in full force. Taken and acknowledged this — day of — before me

G. H. Coroner.

If a wife be required to give evidence, and her husband be not present to enter into recognizance, the wife should not be bound in any penalty or sum of money, but on pain of imprisonment, thus:—"S. the wife of J. S. of &c., labourer, acknowledges herself to be bound to our sovereign lady the Queen on pain of imprisonment, in case she shall make default in the following condition." And in making out the recognizance insert her name in such condition. But if the husband be present he should be bound for the appearance of his wife. So if the witness happen to be an apprentice, or one under the age of twenty-one years, in law termed an *infant*, the master or the parent should be bound for the appearance of the party according to the following precedent:—

*Recognizance*

County of —  
to wit.

R. of the same place, labourer, do severally acknowledge to owe to our sovereign lady the Queen the sum of — pounds each, of lawful money of Canada, to be levied on their several goods and chattels, lands and tenements, by way of recognizance to her Majesty's use, in case default shall happen to be made in the condition hereunder written.

The condition of this recognizance is such, that if the above bounden J. R. and E. D. do severally personally appear at the next general gaol delivery to be holden in and for the county of —, and the said J. R. shall then and there prefer, or cause to be preferred to the grand jury, a bill of indictment against C. D. late of —, labourer, and now in custody for the wilful murder of A. B. late of &c., and that the said J. R. and E. D. do then and there severally personally appear to give evidence upon such bill of indictment to the said grand jury, and in case the said bill of indictment be found by the grand jury a true bill, that then the said J. R. and E. D. do severally personally appear at the said general gaol delivery, and the said J. R. shall then and there prosecute the said C. D. on such indictment, and the said J. R. and E. D. do then and there severally give evidence to the jury that shall pass on the trial of the said C. D. touching the premises, and in case the said bill of indictment shall be returned not found, that then they do severally personally appear at the said general gaol delivery, and then and there prosecute and give evidence to the jury that shall pass on the trial of the said C. D. upon an inquisition taken before me, one of her Majesty's coroners for the said county, on view of the body of the said A. B. and not depart the court without leave, then this recognizance to be void, otherwise to remain in full force. Taken and acknowledged this — day of — before me

Coroner's Office

County of —  
to wit.

ship of —  
instant, the said J. S. do justifiably appear. Given under my hand and seal, this — day of —  
Or in defence against thievery  
Or casually  
(as in a charge)

*Recognizance by Husband for Wife's appearance, and by Master, &c.  
for the appearance of an Apprentice, &c.*

County of — } J. P. of the township of — in the said county,  
to wit. } blacksmith; T. P. of the same place, victualler; J.  
R. of the same place, whitesmith, the husband of S. R.; J. B. of the  
same place, shopkeeper, the *mainpernor* of J. J. his apprentice, an  
infant; J. S. of the same place, yeoman, the *mainpernor* of G. S. his  
son, an infant, do severally acknowledge to owe to our sovereign lady  
the Queen the sum of — pounds, of lawful money of Canada, to be  
levied on their goods and chattels, lands and tenements, by way of re-  
cognizance to her Majesty's use, in case default shall be made in the  
condition following. And S. the wife of J. P. of the same place,  
labourer, on pain of imprisonment, in case she shall make default in  
such condition.

The condition of this recognizance is such, that if the above bounden  
J. P., T. R., S. R. the wife of the said J. R., J. J., G. S. and  
S. R. the wife of the said J. P., do severally personally appear  
at the next general gaol delivery to be holden in and for the  
county of —, and there give evidence on a bill of indictment  
to be preferred against W. T. now at large for the wilful murder  
of S. his wife, and in case the said bill of indictment shall be  
returned by the grand jury a true bill, then that they do severally personally  
appear at the session of general gaol delivery for the said county  
next after the apprehending or surrender of the said W. T., and then  
and there severally give evidence to the jury that shall pass upon the trial  
of the said W. T. touching the premises, and in case the said bill of  
indictment shall be returned by the grand jury not found, that then they  
do severally personally appear at such session of general gaol delivery  
to be then and there holden for the said county, and then and there  
give evidence to the jury that shall pass upon the trial of the said W.  
T. upon an inquisition taken before me, one of her Majesty's coroners  
for the said county, on view of the body of the said S. T. and not de-  
part the court without leave, then this recognizance to be void, other-  
wise to be and remain in full force. Taken and acknowledged this —  
day of —.

G. H., Coroner.

*Coroner's Certificate of Jurors in order for Bail before Justices of the  
Peace.*

County of — } These are to certify that by an inquisition taken be-  
to wit. } fore me on view of the body of C. D. at the town-  
ship of — in the said county, bearing date the — day of —  
instant, the jurors in the said inquisition named have found that A. B.  
justifiably and of inevitable necessity did kill and slay the said C. D.  
Given under my hand this — day of —. G. H., Coroner.

Or in defence of himself and for the safety of his life and property, as  
against thieves, justifiably, &c.

Or casually and by misfortune, and against the will of the said A. B.  
(as in a *chance medley*.)

## COSTS.

By Imp. stat. 18 G. III., c. 19, where any complaint (a) shall be made before any justices, and any warrant shall issue, it shall be lawful for any justice who shall have heard and determined the complaint, to award costs to be paid by either of the parties, as to him shall seem fit, to the party injured; and in case any person ordered by the justice to pay such money, shall not forthwith pay down or give security for the same to the satisfaction of the justice, it shall be lawful for the said justice, by warrant, to levy the said sum by distress and sale of goods; and where goods cannot be found, to commit such person to the house of correction, to be kept to hard labour for any period not exceeding one month, nor less than ten days, or until such money, together with the expenses attending the commitment, be first paid. § 1.

Upon the conviction of any person upon any penal statute, where the penalty shall amount to or exceed five pounds, the costs shall be deducted by the justice, according to his discretion, out of the penalty, so that the deduction shall not exceed one-fifth of the penalty; and the remainder of the penalty shall be paid to the person entitled to the whole in case this act had not been made. § 2.

The forms to this act annexed shall be used. § 3.

By 8 V., c. 38, justices of the peace, at the General Quarter Sessions in July next, (1845), are required to frame a table of fees for all services now rendered in the administration of justice, and for other district purposes, by any sheriff, coroner, clerk of the peace, constable and crier, not remunerated by any law now in force; and the several clerks of the peace shall forthwith transmit such table to the clerk of the crown at Toronto, to be laid before the judges of the Court of Queen's Bench; and such judges are authorised, by rule in term from time to time, to appoint the fees to be taken by such officers accordingly. § 2. All per centage, fees, or allowances, on levying fines and recognizances, shall be levied over and above the amount of such fines and recognizances; and all fees on service for the private benefit of, or in the nature of a civil remedy for, individuals at whose instance the same are performed, shall be paid by such individuals, and the judges shall, in the table to be framed by them as aforesaid, distinguish the fees to be paid by private individuals, and, except as in this act otherwise provided, all other fees shall be paid

(a) Meaning cases that may be disposed of summarily before justices out of Sessions—but not cases of felony, larceny, or misdemeanor triable by indictment.

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out of the district funds. § 3. When any person or persons shall be convicted before any Court of Quarter Sessions of any assault and battery or other misdemeanour, such person or persons shall pay such costs as shall be allowed and taxed by the court; but when any defendant shall be acquitted, the costs of the prosecution shall be paid out of the district funds: and in cases of prosecution for felony, upon conviction or acquittal, or discharge otherwise, the costs of prosecution shall be paid out of the district funds. § 4. Any officer exacting greater fees than established by this act shall for every offence forfeit £10 to any person who shall sue for the same in any court of competent jurisdiction. § 5. District treasurer required to pay fees payable out of the district funds when duly allowed by magistrates in quarter sessions, in the order prescribed by the 59th § of the 4th & 5th V., c. 10. § 6. All suits under this act to be brought within six calendar months after offence committed.

*Form of awarding Costs, under 19 G. III., c. 19.*

County of ——— } I ——— one [or we ——— being two] of her Majesty's  
to wit. } justices of the peace in and for the county aforesaid,  
in pursuance of an act, made in the eighteenth year of his Majesty  
King George the third, intituled, "An act for the payment of costs to  
parties, on complaints determined before justices of the peace out of  
sessions; for the payment of the charges of constables in certain cases;  
and for the more effectual payment of charges to witnesses and prose-  
cutors of any larceny or other felony;" on the complaint of ——— [here  
state the names of the parties, and the offence generally, and the date],  
against ——— for ——— which said complaint was heard and determined  
by, ——— on the ——— day of ——— do award the following costs to be  
paid by ——— viz. [here state the costs.] Given under ——— hand and  
seal [or hands and seals], this ——— day of ——— in the year of our  
Lord ———.

*Form of Warrant of Distress and Sale.*

County of ——— } To the constable of ———, and to all other her Ma-  
to wit. } jesty's constables in and for ——— in ——— aforesaid.  
Whereas ———, of her Majesty's justices of the peace in and for the  
county aforesaid, in pursuance of an act, made in the eighteenth year of  
his Majesty King George the third, intituled "An act for the payment  
of costs to parties, on complaints determined before justices of the peace  
out of sessions; for the payment of the charges of constables in certain  
cases; and for the more effectual payment of charges to witnesses and  
prosecutors of any larceny or other felony"; have awarded, on the ———  
of ——— now last past, on the complaint of ——— against ——— for ———  
the following costs to be paid by ——— viz. (here state the sum): and  
whereas the said ——— being ordered by ——— the said justice (or jus-  
tices) to pay such sum (or sums) as aforesaid, hath not paid down or  
given security for the same, to the satisfaction of ——— the said justice

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(or justices): these are therefore to command you, and each and every of you, to levy the said sum of — by distress and sale of the goods and chattels of the said —, and — do hereby order and direct the goods and chattels so to be distrained to be sold and disposed of within — days, unless the said sum of — for which such distress shall be made, together with the reasonable charges of taking and keeping such distress, shall be sooner paid; and you are hereby also commanded to certify unto — what you shall have done by virtue of this — warrant. Given under — hand and seal (or hands and seals) at — the — day of — in the year of our Lord 18—.

*Constable's Return thereon, for want of Distress.*

County of — } I — constable of — do hereby certify to — justice of the peace of —, that I have made diligent search for, but do not know, nor can find any goods and chattels of — by distress and sale whereof I may levy the sum of — pursuant to — warrant for that purpose, dated the — day of —. Given under my hand, this — day of — in —.

*Commitment thereupon to the House of Correction.*

County of — } To the constable of —, and also to the keeper of the house of correction at —.

Whereas in pursuance of an act made in the eighteenth year of his Majesty King George the third, intituled, "An Act for the payment of costs to parties, on complaints determined before justices of the peace out of sessions, for the payment of the charges of constables in certain cases; and for the more effectual payment of charges to witnesses and prosecutors of any larceny or other felony," — of her Majesty's justices of the peace, in and for the said county did issue — warrant of distress and sale, directed to — of — constable of the said — of —, ordering the said constable to levy the said sum of — of the goods and chattels of the said — in manner and form as therein is mentioned: and whereas it appears to — by the return of — constable of —, dated the — day of —, that he hath made diligent search, but doth not know, nor can find any goods and chattels of the said —, by distress and sale whereof the said sum of — may be levied, pursuant to the said warrant: these are therefore to command you, the said constable of —, to apprehend the said —, and convey the said — to the said house of correction at —, and to deliver the said — there to the said keeper of the said house of correction; and these are also to command you, the said keeper of the said house of correction, to receive the said — into the said house of correction, and there to keep to hard labour for the space of — from the date hereof, or until such sum of —, together with the expenses attending the commitment of the said — to the said house of correction, be first paid, or until the said — be discharged by due course of law. Given under my hand and seal, at —, the — day of —, in the year of our Lord 18—.

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# COUNTIES.

By 12 Vic. c. 78, it is enacted that this act shall come into operation on the 1st January, 1850.

## I. Abolition of District Divisions.

§ 2. The districts in Upper Canada for judicial and other purposes are abolished. § 2. Courts, court-houses and gaols to be called county courts, court-houses and gaols; district grammar schools, county grammar schools, and district offices and officers, to be styled "county." § 4. Courts of assize, &c., sessions of the peace, and district courts, to be held in and for said counties, and the name county used in designating such courts, and also in legal proceedings.

## II. Unions of Counties for Judicial Purposes.

§ 5. Counties mentioned in schedule A. shall for all judicial, municipal, and other purposes, (except representation and registration of titles) be formed into unions, and each union under the name of the united counties of —, and —, (naming them) shall for all such purposes have all courts, offices and institutions, now pertaining to districts, so long as such counties shall remain united. § 6. County property of all such united counties to be common property. § 7. Venue in any judicial proceeding shall describe the county as one of the united counties, and jurors shall be summoned from the body of the united counties as if one county. § 8. All existing laws applicable to districts (except representation and registration of titles) shall apply to every such union, as if but one county.

## III. Dissolution of Unions of Counties.

§ 9. The county where the court-house and gaol are situate, shall be deemed the senior county. § 10. So soon as it shall appear by any census taken, that any junior county contains a population of not less than 15,000, it shall be lawful for the governor, upon the petition of two-thirds or more of the town reeves, for the time being, of such junior county, (if deemed expedient) to issue a proclamation under the Great Seal, setting forth the same, naming a place within such junior county for a county town, and erecting the town reeves thereof into a provisional municipal county, until the dissolution of such union of counties, as provided for by this act: no such petition to be presented or acted upon, unless adopted and signed by such two-thirds, in the month of February after their election, nor until a resolution declaratory of the expediency of such petition shall have been adopted by a majority of the town reeves

present at two several meetings, called for that purpose by a majority of such town reeves—the one to be held in February, in the year next but one, preceeding that in which such petition shall be adopted; and the other in February next, preceeding such last mentioned year. Provided also, *secondly*, that such provisional municipal council shall, during its continuance, consist of the town reeves in such junior county. § 11. Such provisional council shall have all the powers with respect to such junior county as are now by law vested in municipal councils for purchasing property for court-house and gaol, and for levying funds therefor, &c. § 12. Such provisional council may appoint officers to hold office during pleasure. § 13. Such provisional council shall be a body corporate, with corporate powers. § 14. Monies may be assessed and levied upon such junior county by any by-law of such provisional council, in the same manner as by the union council, and paid over to provisional treasurer: Collectors to receive  $2\frac{1}{2}$  per cent. for collection. § 15. So soon as such provisional council shall have erected a suitable court-house and gaol, the debt of the union shall be apportioned by agreement; and in default of agreement the amount shall be settled by *three* arbitrators, or the majority of them, to be appointed as follows: one by the municipal council, another by the provisional council, and the third by such two arbitrators; or in default of the two making such appointment within ten days after their own appointment, then by the Governor in council. This clause also contains other provisions in respect to such arbitration of a usual character, as to the finality of the award, and making the same a rule of court. § 16. Assessments of the current year of the dissolution to belong to the union council. § 17. After compliance with preceeding clauses, a judge and other officers to be appointed, and at least twelve justices of the peace. § 18. So soon as appointments made, proclamation to issue, declaring such junior county disunited. § 19. Provides for a separate registry of titles. § 20. Property of the union to belong to each county according to location. § 21. Provides for continuation of legal proceedings; § 22, and transfer of records. § 23. All rules and regulations contained in any act of parliament relating to court-houses and gaols, shall extend to such junior county so disunited, and the courts of assize, &c. Sessions of the peace and every other court of such junior county shall be holden at the court-house of such county. § 24, enacts that the several counties in schedules B. and C. shall for all purposes include the townships lying therein. § 25. For *judicial* purposes only, the townships of Oneida and Seneca shall be attached to the county of *Lincoln*; § 26/and the townships of

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Rainham and Walpole to the county of *Haldimand*. § 27. That the counties in schedule C. shall, as well for the purpose of representation and registration, as for judicial, municipal, and all other purposes, include the townships and places, of which, for the purpose of representation, such counties now by law consist, subject to the proviso hereinafter mentioned. § 28. For the purposes of *representation*, the city of Toronto and the liberties thereof, the cities of Kingston and Hamilton, and the town of Niagara, Cornwall, Brockville, London and Bytown, shall form no part of the counties within which they are situate. § 29. Cities of Toronto, Kingston, and Hamilton, shall be united to their respective counties for judicial purposes.

IV. *Miscellaneous and Temporary Provisions.*

§ 30. Town reeves of the different townships &c., in the counties of Kent and Lambton, are to form a provisional municipal council for such counties as united counties, with full powers. § 31. Provides for dissolving the union between the united counties of Kent and Lambton, and the county of Essex, and after such dissolution, said united counties of Kent and Lambton shall form a union of counties. § 32. Judicial proceedings in the several districts to be deemed as pending in the united counties to which they are transferred. § 33. Town reeves of the townships, unions of townships &c., in the counties of Haldimand and Welland, to form a provisional municipal council for each county, and possess full powers. § 34. Provision for dissolving the union of counties of Lincoln, Haldimand and Welland. § 35. All district property to be vested in the municipal corporations, as set forth in schedule B. § 36. All acts inconsistent with this repealed. § 37. Justices of the peace for districts to have like powers in united counties. § 38. Act may be amended this session.

SCHEDULE A.

*Counties of Upper Canada united for Judicial and other purposes.*

The united counties of—

1. Essex and Kent.
2. Frontenac, Lenox and Addington.
3. Lanark and Renfrew.
4. Leeds and Grenville.
5. Lincoln, Haldimand and Welland.
6. Northumberland and Durham.
7. Prescott and Russell.
8. Stormont, Dundas and Glengary.
9. Wentworth and Halton.

## SCHEDULE B.

*Counties and Unions of Counties in Upper Canada, to which Judicial and other proceedings of the late Districts are transferred respectively, under this act.*

1. Carleton .....	those of the Dalhousie District,
2. Essex and Kent .....	" Western "
3. Frontenac, Lenox and Addington .....	" Midland "
4. Hastings .....	" Victoria "
5. Huron .....	" Huron "
6. Lanark and Renfrew .....	" Bathurst "
7. Leeds and Grenville... ..	" Johnstown "
8. Lincoln, Haldimand and Welland .....	" Niagara "
9. Middlesex .....	" London "
10. Norfolk .....	" Talbot "
11. Northumberland and Durham... ..	" Newcastle "
12. Oxford .....	" Brock "
13. Peterborough .....	" Colborne "
14. Prescott and Russell .....	" Ottawa "
15. Prince Edward .....	" Prince Edward "
16. Simcoe .....	" Simcoe "
17. Stormont, Dundas and Glengary .....	" Eastern "
18. Waterloo .....	" Wellington "
19. Wentworth and Halton .....	" Gore "
20. York .....	" Home "

## SCHEDULE C.

*Counties in Upper Canada which henceforth shall, for all purposes, include and consist of the Townships and places therein mentioned.*

1. Haldimand, which shall include and consist of the townships of Canboro', Cayuga, Dunn, Moulton, Oneida, Rainham, Seneca, Sherbrooke and Walpole.
2. Halton, which shall include and consist of the townships of Beverley, Dumfries, Esqueness, East Flamborough, West Flamborough, Nassagaweya, Nelson and Trafalgar.
3. Norfolk, which shall include and consist of the townships of Charlottetown, Houghton, Middleton, Townsend, Woodhouse, Windham, Walsingham and Long-Point, and Ryerson's Island in Lake Erie.
4. Waterloo, which shall include and consist of the townships of Arthur, Amaranth, Bentinck, Derby, Eramosa, Egremont, Erin, Guelph, Glenelg, Garrafraxa, Holland, Luther, Mornington, Minto, Maryborough, Melancthon, Normanby, Nichol, Peel, Proton, Pualinch, Sydenham, Sullivan, Waterloo, Wilmot, Woolwich and Wellesley.
5. Wentworth, which shall include and consist of the townships of Ancaster, Brantford, Binbrooke, Barton, Glandford, Onondaga, Saltfleet and Tuscarora.

By 12 Vic. c. 79, § 1, the county of *Kent* is to include the several townships named in this section, and the county of *Lambton* is to include the several townships also named in this section; and the county of *Lambton* for the purpose of r. pre-

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sentation is to continue united with the county of Kent, and together return one member—said counties of Kent and Lambton, and the county of Essex, to form a union of counties, and be known as the united counties of Essex, Kent and Lambton, until dissolved by proclamation, as provided by law. § 2. Parts of Dawn, Sombra and Zone detached, under the name of the Gore of Camden and attached to Camden; also other part of Sombra detached, under the name of the North Gore of Chatham, and attached to Chatham; and part of the township of Zone detached, form the new township of Euphemia. § 3 to the 33 and 34 sec. of the 12 Vic. c. 78, is to extend to the united counties of Essex, Kent and Lambton; and all the provisions of the 10 & 11 Vic. c. 39, respecting township councillors of the townships of the said county of Kent, shall be vested in the provisional municipal council of said county of Kent. § 4 provides for the dissolution of said county of Lambton, upon the petition of two-thirds or more of the town reeves of said county.

### COUNTY COUNCILS.

By the Municipal Act, 12 V. c. 81 (as amended (a) by the 13 & 14 V. c. 64), § 32, the inhabitants of every county shall be a body corporate, with power to sue and be sued, &c., and of purchasing and holding lands for the use of the inhabitants in their corporate capacity; the powers of such corporation to be exercised through and in the name of the municipal council of such county. § 33. The town reeves and deputy town reeves of the several townships, villages and towns within each county, shall constitute [the municipal council for such county. But no town reeve shall be entitled to take his seat in such council until he shall have filed with the clerk a certificate under the hand and seal of the town clerk of the township, village or town, of his having been duly elected, and taken the oath of qualification and office as such town reeve. The deputy town reeve is also required to file a similar certificate, and a copy of the collector's roll for the previous year, verified by the collector, and sworn to before a justice of the peace for the county.] § 24. The council to meet at the shire hall, if there be one, otherwise at the county court house, annually, on the *fourth* Monday in January, with power to adjourn and hold special meetings to be summoned by the county warden. § 35. The council at their first meeting to elect from among themselves a county warden. § 36. Repairs of the shire hall, county court house and gaol and house of correction, to be charged upon the county. § 37. Whenever any highway,

(a) The words within the brackets [ ] show the amendments.

road, street, bridge or other communication within any township shall, by any county by-law, be assumed by the county, the council of such county shall plank, gravel or macadamize the same, and the powers of township municipalities over the same shall cease. § 38. Roads and bridges between different townships shall be under the control of the county council exclusively. § 39. Roads and bridges between two counties shall be under the jurisdiction of both. § 40. Accounts to be audited. § 41. The council of each county shall have power to make by-laws for all or any of the following purposes, viz:

1—For the purchase and acquirement of all such real and personal property, within the county, as may be required for county purposes, and for the sale and disposal of the same when no longer required. 2—For the erection, preservation, improvement or repair of a shire hall, court house, gaol, house of correction, house of industry, and of all other houses and other buildings required by or being upon any land acquired by or belonging to such county as a corporation. 3—For the purchase and acquirement of such real property as may be required for county grammar school purposes, and for the erection, preservation, improvement and repair of county school houses for the use of grammar schools in such parts of the county, or within any city or the liberties thereof, lying within the boundaries of such county, as the wants of the people most require; for the sale and disposal of the same when no longer required; and for making such provision in aid of such grammar schools as they may deem expedient for the advancement of education in the same. 4—For making some permanent provision for defraying, out of the public funds of such county, the expense of the attendance at the seat of the University of Toronto, and of that of Upper Canada College and Royal Grammar School there, of such and so many of the pupils of the different public grammar schools of such county, as shall be desirous of, and in the opinion of the respective masters of such grammar schools shall be of competent attainments for entering into competition for any of the scholarships, exhibitions or other similar prizes offered by such University or College to competition amongst such pupils, but which pupils from the inability of their parents or guardians to incur the necessary expense of such attendance, might otherwise be deprived of the opportunity of competing for the same. 5—For the endowment of such and so many fellowships, scholarships, exhibitions and similar prizes in the University of Toronto, or in Upper Canada College and Royal Grammar School there, to be open to competition amongst the pupils of the different public grammar schools of such county, as they shall deem expedient for the encouragement of learning amongst the youth of such county. 6—For the appointment, [under the corporate seal, of one or more county engineers, one or more inspectors of the county house of industry, one or more overseers of highways, road surveyors, and such other officers as may be necessary for carrying into effect any of the provisions of this or any former act, or of any by-law, with power to displace and appoint others, and add to or diminish the number.] 7—For the

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settling the remuneration to all county officers in all cases where the same is not or shall not be settled by act of the legislature, and for providing for the payment of the remuneration by such act of the legislature or by the by-laws of the said municipal council provided and appointed for all county officers. 8—For regulating all ferries between any two places in such county, and for establishing the rates of pay or hire to be taken by the owners or conductors of the boats or vessels employed on such ferries; but no by-law for any such purpose shall have any force or effect until the same shall have been assented to by the governor of this province in council. 9—For settling and paying a rate at which the townreeves and deputy-townreeves forming such municipal council shall be remunerated for their attendance at such council: Provided always, nevertheless, that no by-law to be passed for this latter purpose after the year of our Lord one thousand eight hundred and fifty, shall be valid; unless the same shall by the terms of it be limited to take effect two whole years at least from the passing thereof. 10—For the erection, construction or repair of such drains and water courses as the interests of the inhabitants of such county at large shall, in the opinion of the municipal council, require to be so erected, constructed or repaired at the public expense of such county. 11—For the opening, constructing, making, levelling, pitching, raising, lowering, gravelling, macadamizing, planking, repairing, planting, improving, preserving and maintaining of any new or existing highway, road, street, side-walk, crossing, alley, lane, bridge or other communication running, lying or being within one or more townships, or between two or more townships of such county, or between such county and any adjoining county or city, or on the bounds of any town or incorporated village lying within the boundaries of such county, as the interests of the inhabitants of such county at large shall in the opinion of the municipal council require to be so opened, constructed, made, widened, changed, diverted, levelled, pitched, raised, lowered, gravelled, macadamized, planked, repaired, planted, improved, preserved or maintained at the public expense of such county; and for entering into, performing and executing any arrangement or agreement with the municipal corporation of any such adjoining county or counties, city or cities, or of any such town or incorporated village as aforesaid, for the execution of any such work at the joint expense and for the joint benefit of the municipal corporation of such counties, cities, towns or villages and the people they represent respectively; and for the stopping up, pulling down, widening, altering, changing or diverting of any such highway, road, street, bridge or communications within the same; Provided always, nevertheless, that no such new, widened, altered, changed or diverted highway, road, street, side-walk, crossing, alley, lane, bridge or other communication, shall be laid out so as to run through or encroach upon any dwelling house, barn, stable or outhouse, or through any orchard, garden, yard or pleasure ground, without the consent in writing of the owner thereof. 12—For the protection and preservation of any timber, stone, sand or gravel growing or being upon any allowance or appropriation for any such county roads. 13—For regulating the driving

and riding on or over any county bridge erected or to be erected under the authority of such municipal council. 14—For preventing the immoderate riding or driving of horses or cattle in any of the public highways in such county, whether such highways be township or county roads. 15—For making regulations as to pits, precipices and deep waters or other places dangerous to travellers in the immediate neighbourhood of any county road or bridge. 16—For granting to any town, township or village, in such county, by way of loan or otherwise, such sum or sums of money in aid of such other monies as may be raised by the municipal corporation of such town, township or village, or by voluntary subscription, for or towards the making, opening or erecting of any new road or bridge in such town, township or village, in cases where such municipal council shall deem such town, township or village work of sufficient importance to justify the affording such assistance to it, with a view to the general interest possessed by the county at large in such town, township, or village, and yet where such work is not of a character, in their opinion, to justify them in at once assuming the same as a county work, to be executed wholly at the expense of the county at large. 17—For attaching any new township or townships within such county, not having a sufficient population for a separate municipal organization of their own under the provisions of this act, to such of the older townships of such county as they shall deem best for the convenience of the inhabitants of such new township or townships, and for thus forming them into a union of townships for the purpose of such municipal organization. 18—For regulating the manner of granting to associated joint stock road or bridge companies [to which opposition has been made in accordance with the provisions of the act passed in the present session, intituled, "An act to authorise the formation of joint stock companies for the construction of roads and other works in Upper Canada," permission to proceed] with any roads or bridges within the jurisdiction of such municipal council, and the manner of afterwards ascertaining and declaring according to law the completion of the works undertaken by such companies respectively, so as to entitle such incorporated companies to levy tolls upon such works, and of all examinations, enquiries and investigations necessary for the proper, efficient and judicious exercise of such power. 19—For taking stock in or lending money to any incorporated road or bridge company to which such municipal council shall have granted a license, to proceed with such work in accordance with the requirements of the statute in that behalf, or in or to any other such incorporated road or bridge company in whose road or bridge the inhabitants within the jurisdiction of such municipal council shall in the opinion of such municipal council be sufficiently interested to warrant them in taking such stock or lending such money for the advancement of such enterprise; all dividends, interests and proceeds to arise or be received from such stock or loan being at all times applicable to the general purposes of such municipal council, and to go in reduction of the rates required to be levied for such purposes. 20—For the imposing fines not exceeding in any case ten pounds currency, for the breach of all or any of the by-laws or regulations of such municipal council. 21—For borrowing,

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under the restriction and upon the security hereinafter mentioned, all such sums of money as shall or may be necessary for the execution of any county work within their jurisdiction and the scope of the authority by this act conferred upon them. 22—For raising, levying, collecting and appropriating such moneys as may be required for all or any of the purposes aforesaid, either by way of tolls to be paid on any county bridge, road or other public work, to defray the expense of making, repairing or maintaining the same, or by means of a rate or rates to be assessed equally on the whole ratable property of such county liable to assessment, according to any law which shall be in force in Upper Canada concerning rates and assessments. 23—For the repeal, alteration or amendment from time to time of all or any of such by-laws, and the making others in lieu thereof, as to them may seem expedient for the good of the inhabitants of such county.

For further provisions, see title "Municipal Corporations."

### COUNTY COURT.

By 8 V., c. 13, entitled "An act to amend, consolidate and reduce into one act the laws now in force establishing or regulating the practice of district courts, &c." all former acts are repealed, and it is enacted, "that there be established in every district a court of law and record by the name of the District Court, with one or more judges over the same, being barristers of at least five years' standing, to hold plea of all causes or suits relating to *debt*, *covenant*, or *contract*, to the amount of £25; and in contract or debt on the common courts, where the amount is ascertained by the signature of defendant, to £50, and in matters of *tort* not exceeding £20, and where titles to land shall not be brought in question."

By 9 V., c. 7., the court is to hold four terms in each year, commencing on the Monday in the week next but three preceding the week in which the county quarter sessions are held, and ending on Saturday of the same week.

By 12 V., c. 78, § 4, name of the court changed to "County Court."

By 13 V., c. 52, the jurisdiction of this court is extended to and established to hold plea of all causes relating to debt, covenant, or contract, to the amount of £50; and in debt or contract, where the amount is ascertained by the signature of the defendant, to £100, and in matters of *tort* relating to personal chattels, where the damages shall not exceed £30, and the title to land not be brought in question. Superior law courts to have a concurrent jurisdiction, but the plaintiff not to recover more than county court costs.

§ 2. Writs of summons and pleadings in this court may be served in any county, and the defendant must plead thereto

within the usual time, as if served in the county where suit instituted.

§ 3. Writ of subpoena and execution, and rules on sheriff's orders and proceedings, may be issued into any other county, and served and executed there.

§ 4. All actions in the county courts shall be brought either in the county in which the defendant, or one or more of them shall then reside, or in the county in which the debt was contracted or made payable, or the contract was made, at the option of the plaintiff; and in default thereof, the proceedings before plea, on judgment signed, may be set aside with costs.

### COUNTY FUNDS.

By 8 Vic. 4, c. 72, § 3, monies arising from duties on licenses to keep houses of public entertainment issued after this act, shall be appropriated to the uses of the districts, or other municipal divisions of the province in which they shall be collected, and shall be paid over to the treasurers thereof accordingly. § 4. Upper Canada rebellion losses debentures to be issued under this act, to be first paid out of the duties on licenses in Upper Canada.

### CRIMINAL LAW.

By Imp. statute 14 G. III., c. 83, § 11, it was enacted that the criminal laws of England should continue to be administered and observed as law in the province of Quebec (of which the province of Upper Canada then formed a part) as well in the description and quality of the offence, as in the method of prosecution and trial, and the punishments and forfeitures thereby inflicted, to the exclusion of every other rule of criminal law, or mode of proceeding, which prevailed in the said province before the year 1764; subject to such alterations as the provincial legislature might thereafter make therein.

After the division of the said province into the late provinces of Upper Canada and Lower Canada, by stat. \*40 G. III., c. 1, entitled "An Act for the further introduction of the criminal law of England into this province," it is enacted, that the criminal law of England, as it stood on the 17th day of September, 1792, shall be and the same is thereby declared to be the criminal law of Upper Canada.

Subsequently, many alterations and improvements were made in the criminal law of Upper Canada, which are referred to in different parts of this work; and since the re-union of the said provinces, now constituting the province of Canada, the following important acts have been passed relating to the whole of the united province, viz:—

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The 4 & 5 V., c. 24, intituled "An act for improving the administration of criminal justice in this province."

The 4 & 5 V., c. 25, intituled "An act for consolidating and amending the laws in this province relative to larceny and other offences connected therewith;"

The 4 & 5 V., c. 26, intituled "An act for consolidating and amending the laws in this province relative to malicious injuries to property;"

The 4 & 5 V., c. 27, intituled "An act for consolidating and amending the statutes in this province relative to offences against the person."

The provisions contained in these acts will be found under their respective titles: each of the said acts contains a clause repealing all former acts or provisions of law inconsistent or contradictory to said acts.

### CRUELTY TO ANIMALS.

By the Municipal Act, 12 Vic. c. 81, the municipalities of incorporated towns, villages and cities respectively, are empowered to make by-laws for preventing the excessive beating or cruel and inhuman treatment of animals on the public highways of such localities.

### CURRENCY.

\* By statute 2 G. IV., c. 13, intituled "An Act to establish an uniform currency throughout this province," it is enacted, that no interest shall be recovered on any bond, note, or other instrument, made after that date (1st July, 1822), in which the penalty or sum payable shall be expressed in New York currency, nor any costs allowed in actions brought thereon: and after the 1st July, 1822, no rendering of an account shall be considered a demand, nor shall any admission be given in evidence as an acknowledgment of debt, unless such account shall have been rendered in provincial currency; and no shop-books shall be given in evidence unless made in provincial currency.

See also *ante* title "Coin."

### CUSTOMS.

By 12 Vic. c. 1, § 2, custom duties are required to be levied upon goods, wares and merchandize imported into this province, or taken out of warehouses for consumption therein, as set forth in schedule A. Articles enumerated in the "Table of Exemptions" in the said schedule may be imported without duty, and the articles enumerated in the "Table of Prohibitions," shall not be imported, under the penalty therein

mentioned, and if imported shall be forfeited and forthwith destroyed. § 3. Importations from any other British North American Province are exempt from duty only so long as similar importations are admitted there free of duty: otherwise the same shall be subject to the same duty as if imported from any other country. § 4. Unenumerated articles to bear the same duty as enumerated articles similar in material, quality or use. § 19. If any person shall knowingly and wilfully, with intent to defraud the revenue, smuggle, or clandestinely introduce into this province any goods subject to duty, without paying or accounting for the duty thereon, or shall make out or pass or attempt to pass through the custom-house, any false, forged, or fraudulent invoice, or shall in any way attempt to defraud the revenue by evading the payment of the duty, or of any part of the duty on any goods, every such person, his, her, or their aiders or abettors shall, in addition to any other penalty or forfeiture, be deemed guilty of a misdemeanor, and on conviction be liable to a penalty not exceeding £50, or to imprisonment for a term not exceeding one year, or both, in the discretion of the court.

SCHEDULE A.  
TABLE OF DUTIES OF CUSTOMS INWARDS.  
*Articles.*

	Duty Cy.
	£ s. d.
SUGAR, Refined, in leaves or crushed or candy, the cwt. ....	0 14 0
And further for every £100 value .....	12 10 0
—, Bastard and other kinds, the cwt. ....	0 9 0
And for every £100 value .....	12 10 0
MOLASSES, the cwt. ....	0 3 0
And further for every £100 value .....	12 10 0
TEA, the lb. ....	0 0 1
And further for every £100 value .....	12 10 0
COFFEE, Raw or green, the cwt. ....	0 4 8
And further for every £100 value .....	12 10 0
—, Other kinds, the cwt. ....	0 14 0
And further for every £100 value .....	12 10 0
TOBACCO, Manufactured, the lb. ....	0 0 1
And further for every £100 value .....	12 10 0
—, Unmanufactured, the lb. ....	0 0 1
And further for every £100 value .....	12 10 0
—, Cigars the lb. ....	0 1 8
And further for every £100 value .....	12 10 0
—, Snuff, the lb. ....	0 0 4
And further for every £100 value .....	12 10 0
WINE, In wood, value £15 the pipe of 126 gallons or under, the gallon. .	0 0 8
And further for every £100 value .....	25 0 0
—, In wood, value over £15 the pipe; the gallon. ....	0 1 8
And further for every £100 value .....	25 0 0
—, In bottles, or other vessels not made of wood, the gallon .....	0 4 0
And further for every £100 value .....	25 0 0
SPRITS AND STRONG WATERS, of all sorts, for every gallon of any strength, not exceeding the strength of proof by Syke's Hydrometer, and so in proportion for any greater strength than the strength of proof, and for any greater or less quantity than a gallon, viz. :	
WHISKY the gallon, .....	0 0 8
And further for every £100 value .....	12 10 0

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RUM, the gallon .....	0	1	3
And further for every £100 value .....	25	0	0
GENEVA, BRANDY and other SPIRITS or STRONG WATERS, except RUM and WHISKEY, the gallon .....	0	2	0
And further for every £100 value .....	25	0	0
SPIRITS, CORDIALS and LIQUEURS, sweetened or mixed with any article so that the strength cannot be ascertained by Sykes' hydrometer, the gallon .....	0	3	0
And further for every £100 value .....	25	0	0
SALT, the bushel .....	0	0	1
And further for every £100 value .....	12	10	0
SWISS and FRUITS, NUTS, VINEGAR, MACARONI and VERMICELLI, SWEET MEATS, or FRUIT preserved in sugar, candy or molasses, for every £100 value .....	30	0	0
ANIMALS of all kinds, HAMS, Meats of all kinds, (except Mess Pork) Butter, Cheese, Flour, Barley, Buckwheat, Bear and Bigg, Oats, Rye, Beans and Peas, Meal of the above Grains, and of Wheat not boiled, Bran in Shorts, and Hops, for every £100 in value .....	20	0	0
ANCHORS,—Bark, Berries, Nuts, Vegetables, Woods and Drugs used solely in dyeing, and Indigo,—Bristles,—Burr-stones unwrought,—Chain Cables, the iron of the links of which is not less than five-eighths of an inch diameter, and which are not less than fifteen fathoms in length,—Coal and Coke,—Grease and Scraps,—Hemp, Flax, and Tow undressed,—Hides,—Junk or Oakum,—Lard,—Lead, pig and sheet,—Marble in blocks unpolished,—Oil, Coconut and Palm only,—Ores of all kinds of Metals,—Railroad bars,—Bar and Rod Iron not hammered, Charcoal, made or refined,—Boiler Plate,—Sheet-iron not thinner than number sixteen wire gauge, and Hoop Iron not more than two inches broad,—Spike Rods, Pig, Scrap and Old Iron,—Pipe Clay,—Resin and Rosin,—Saw-logs,—Ships' Water Casks in use,—Teasles,—Steel,—Broom corn,—Wood used in making carpenters' and joiners' tools,—Tallow,—Tar and Pitch,—Tarred Rope, when imported by ship-builders for the rigging of their ships,—Type-metal in blocks or pigs,—Wool, for every £100 .....	5	10	0
ALL GOODS, WARES and MERCHANDIZE, not otherwise charged with duty, and not hereinafter declared to be exempt from duty, for every £100 value .....	12	10	0

TABLE OF EXEMPTIONS.

Shoes, Pot and Pearl, and Soda; Cotton Wool; Anatomical Preparations; Philosophical Instruments and Apparatus; Printed Books, (not foreign reprints of British copyright works); Maps; Busts and Casts of Marble, Bronze, Alabaster, or Plaster of Paris; Paintings, Drawings, Engravings, Etchings and Lithographs; Cabinets of Coins, Medals or Gems, and other collections of Antiquities; specimens of Natural History, Mineralogy or Botany; Trees, Shrubs, Bulbs and Roots; Wheat and Indian Corn; Animals specially imported for the improvement of Stock.

Models of Machinery and other inventions and improvements in the Arts.

Coin and Bullion.

Manures of all kinds.

Arms, Clothing, Cattle, Provisions and Stores of every description, which any Commissary or Commissaries, Contractor or Contractors shall import or bring, or which may be imported or brought by the principal or other officer or officers of Her Majesty's Ordnance into the Province for the use of Her Majesty's Army or Navy, or for the use of the Indian Nations in this Province, provided the duty otherwise payable thereon would be defrayed or borne by the Treasury of the United Kingdom or of this Province.

Horses and Carriages of travellers; and Horses, Cattle and Carriages and other vehicles when employed in carrying Merchandise, together with the necessary harness and tackle, so long as the same shall be *bona fide* in use for that purpose, (except the Horses, Cattle, Carriages, Vehicles and Harness of persons hawking Goods, Wares and Merchandise through the Province for the purpose of retailing

## DESERTERS.

the same,) and the Horses, Cattle, Carriages and Harness of any Circus or Equestrian Troop for exhibition; the Horses, Cattle, Carriages and Harness of any Menagerie—to be free.

Donations of Clothing specially imported for the use of or to be distributed gratuitously by any charitable society in this Province.

Seeds of all kinds, Farming Utensils and Implements of Husbandry, when specially imported in good faith by any Society incorporated or established for the encouragement of Agriculture.

The following articles in the occupation or employment of persons coming into the Province for the purpose of actually settling therein, viz.:—

Wearing apparel in actual use, and other personal effects not merchandise; horses and cattle; implements and tools of trade of handicraftsmen.

The personal household effects, not merchandise, of inhabitants of this Province, being subjects of Her Majesty and dying abroad.

And the following articles, when imported directly from the United Kingdom, or from any British North American Province, and being the growth, produce or manufacture of the said United Kingdom, or of such Province, respectively, viz.:

Animals, beef, pork, biscuit, bread, butter, cocoa, paste, corn or grain of all kinds; flour; fish, fresh or salted, dried or pickled; fish-oil; furs or skins, the produce of fish or creatures living in the sea; gypsum, horns, meat, poultry, plants, shrubs and trees, potatoes and vegetables of all kinds, seeds of all kinds, skins, pelts, furs or tails undressed; wood, viz., boards, planks, staves, timber and firewood.

### TABLE OF PROHIBITIONS.

The following Articles are prohibited to be imported, under a penalty of fifty pounds, together with the forfeiture of the parcel or package of goods in which the same may be found.

Books and Drawings of an immoral or indecent character.

Coin, base or counterfeit.

## DEER.

\* By statute 2 G. IV. c. 17, no person shall kill any deer in this province, *feræ naturæ*, after the tenth January until the 1st July in every year, under the penalty of 40s. to be recovered before any two justices; one moiety to the province and the other to the informer. This act not to extend to Indians.

N. B.—This act does not contain any power of distress or sale for the penalty.

## DESERTERS.

By \*3 V., c. 3, the \*44 G. III., c. 2, which related to desertion, is repealed. § 2. If any person, other than enlisted soldiers in her Majesty's service, or sailors engaged in the naval service of her Majesty, shall, by words or with money, or by any ways, methods, or means whatsoever, directly or indirectly prevail upon, procure, persuade or encourage any such soldier or sailor to desert or leave her Majesty's naval or military service as aforesaid, and shall be thereof lawfully convicted before any court of oyer and terminer and general gaol delivery in this province, such person so offending shall be deemed guilty of a misdemeanor, and, upon conviction, shall be liable to be punished by imprisonment in the common gaol of the district in which such conviction shall happen, or

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by imprisonment in the provincial penitentiary in this province, for such period as the court before which such trial shall take place shall, in their discretion, adjudge, and shall be further liable to the payment of such fine as the said court shall impose upon such offender. § 3. If any person, other than an enlisted soldier or sailor, shall harbour, conceal, receive, or assist any deserter from her Majesty's naval or military service, knowing him to be a deserter, such person so offending shall be deemed guilty of a misdemeanor, and, upon conviction, shall be liable to the penalties and punishments above mentioned.

## DISTILLERS.

By 9 V., c. 2, § 1, all former acts are repealed. § 2. No person shall act as a distiller, unless licensed, under a penalty of £10 for each day, and forfeiture of stock and apparatus. § 3. District Inspector to issue licenses, on payment of £10 duty, to remain in force until 5th January next after date thereof. § 4. No license to be granted except on a written requisition signed by the party. § 5. A further duty imposed of 2d. a gallon on spirits, strong waters or spirituous liquors, to be paid to the district inspector; spirits re-distilled exempt. § 6. Parties obtaining license also to give bond with two sureties, for rendering accounts and payment of duties; § 7, such bond to remain in force during the license; a new bond to be entered into when a new license is granted. § 8. Distillers to have their names and calling inscribed in legible characters in front of the building, under a penalty of £5 for each day of omission. § 9. Distillers to keep a book in the form to be furnished by district inspector, and to be open at all seasonable times to his inspection, wherein such distiller shall enter, daily, the quantities of grain or other vegetable production, or other substance, put by him into the mash tub, or otherwise used by him for the purpose of producing beer or wash, or consumed by him in any way for the purpose of producing spirits, strong waters, or spirituous liquors, or otherwise disposed of, and the quantity of spirits, spirituous liquors, or strong waters, by him distilled, shewing the quantities produced each time, if there shall have been any distinct sets of operations by reason of which duties shall have become payable, under a penalty of £50 for neglect or false entry; and the inspector may at all times demand to be shown the stock of grain, &c., on hand. § 10. Accounts to be rendered by distillers twice a month to the inspector, of spirits, &c., distilled, with the strength thereof and the quantity produced each time; and shewing also the quantity of grain, &c., used; such account to be on oath, and in the form following:—

I — do solemnly swear, that the account above written, to which I have also subscribed my name, contains a true account of the total quantity of every kind of spirits, or strong waters, or spirituous liquors, distilled, manufactured, or made by me, (*or by — as the case may be,*) within the time mentioned in the same account, and on which duty is payable, and of the quantities of each kind respectively, and the strength thereof, and also of the quantities produced at each separate time therein mentioned, by a distinct set of operations; and also of the quantities of all grain or other vegetable production or substance consumed by me, (*or by the said —,*) during the said time. So help me God.

Such affidavit to be made before a justice, and delivered with the account to the inspector, who may further interrogate the party, on oath, as to such account, before a justice. § 11. False statement to be perjury. § 12. Distillers to produce books to the inspector at any seasonable time, and inspector to have free access to the premises at all times, under a penalty of £20 for each neglect or refusal; no admittance to be required between sunset and sunrise, except when distiller is at work, or unless inspector be accompanied by a peace officer. § 13. Duties to be paid when account rendered, under a penalty of £20 and forfeiture of license. § 14. Duties recoverable although account not rendered, but with three times the amount, as additional penalty. § 15. Distiller not to work his distillery without *ten* days' previous notice, in writing, to the inspector; such notice not to extend to a longer period than *thirty* days; and any distiller working his distillery without giving such notice shall be liable, each day, to the same penalty and forfeiture as if doing so without a license. § 16. Payment of penalties not to release parties from the duties; duties to be recovered with full costs in any court of competent jurisdiction; and the stock in trade and apparatus on the premises are made specially liable therefor; and if forfeited under this act, may be seized, marked and secured by the inspector until condemned, or released by competent authority, and shall not be used in the meantime. § 17. Distillers required to furnish the inspector with lights, ladders, and measures for examining, guaging, &c., any still, vessel, or stock on such premises, under a penalty of £20. § 18. District inspector and persons acting under him to have free access to the premises at any hour of the day or night, and make all necessary inquiries and searches, subject to the restrictions aforesaid. § 19. Inspectors, or any persons acting under them, having first obtained a search warrant from a justice of the peace, on affidavit shewing reasonable grounds for issuing thereof, may, at any hour between sunrise and sunset, search any house, building, or place mentioned in such warrant, sus-

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pected of having any unlicensed still, auxiliary vessel, mash tub, or other vessel illegally in use therein. § 20. Penalties under this act may be recovered before any *two* or more justices of the peace, where the offence committed, on the oath of two credible witnesses, and if not paid, levied by distress and sale; or such justices may, in their discretion, commit the offender to the common gaol until penalty and costs are paid—one moiety of the penalty to belong to her Majesty, and the other moiety to the prosecutor. § 21, contains a provision also for recovery of the penalties, in civil courts. § 22. Revenue officers to be competent witnesses if not prosecutors; and no person making any seizure under this act shall be liable for damages, if the court shall certify there was *probable cause*. § 23 imposes a penalty of £5 on persons refusing to give evidence when summoned, to be recovered as other penalties. § 24 directs the appropriation of duties. § 25, 26. This act to commence on the 5th January, 1847, and to continue in force till the 1st January, 1848, and from thence to the end of the next session.

By 12 V., c. 14, § 1, the duty of 2d. per gallon is repealed; and by § 2, a duty of *one penny* per gallon, wine measure, is substituted, for spirits not exceeding the strength of proof by Sykes' Hydrometer, and so in proportion for any greater strength than the strength of proof, and for any greater or less quantity than a gallon, and such duty shall be charged upon the quantity of spirits to be ascertained after the first process of rectification. § 4 authorises the governor in council to make regulations for warehousing. § 5 enacts that the word *spirits* shall include all spirits, strong waters, and spirituous liquors of any kind. § 6. The 9 V., c. 2, as now amended, is continued until repealed by competent authority.

For forms of proceeding see titles "Information," "Summons," and "Conviction."

### **DISTRESS.**

To justify taking a distress, the party must have a regular warrant for so doing, and must take care that the things taken are distrainable, and that the distress is made in due time and place.—*Co. Lit.* 47. All distresses must be made in the day time, unless in the case of cattle distrained *damage feasant*.—1 *Inst.* 142; *Bull.* N. P. 61. Persons making a lawful distress may sell the same upon the premises, in like manner as may be done off the same.—2 *W. & M. Sess.* 1, c. 5.

#### *Of Distress by Warrant of Justices of the Peace.*

By statute 27 G. II., c. 20, it is enacted as follows:—In all cases where any justice of the peace is, or shall be required or empowered by any act of parliament to issue a warrant of dis-

trese, for the levying of any penalty inflicted, or any sum of money directed to be paid by such act, it shall be lawful for the justice granting such warrant, therein to order and direct the goods and chattels, so to be distrained, to be sold and disposed of within a certain time, to be limited in such warrant, so as such time be not less than *four* days, nor more than *eight* days, unless the penalty or sum of money for which such distress shall be made, together with the reasonable charges for taking and keeping such distress, be sooner paid: and the officer making such distress shall and may deduct the reasonable charges of taking, keeping and selling such distress, out of the money arising by such sale, and the overplus (if any) (after such charges, and also the said penalty or sum of money shall be satisfied and paid,) shall be returned, on demand, to the owner of the goods so distrained; and the officer executing such warrant, if required, shall shew the same to the person whose goods are distrained, and shall suffer a copy thereof to be taken.

When an act of parliament orders a distress and sale of goods, it is in the nature of an execution, and replevin will not lie.—*Bac. Abr.* title "Replevin."

If, in seizing for the whole amount, the first distress is found insufficient, from mistaking the value of the goods seized, a second distress may be made.—*Burr.* 589.

*Distress Warrant, where part of the penalty goes to the informer, and part to the poor, i. e. to the county.* See post title "Fines," 11 G. IV., c. 1.

County of — } To the constable of — and to all other constables to wit. } In and for the said —.

Whereas A. B. of — labourer, is duly convicted before me J. C., Esquire, one of her Majesty's justices assigned to keep the peace, and also to hear and determine divers felonies, trespasses and other misdemeanors in the said county committed, for that he the said A. B. on the — day of — in the — year of the reign of our sovereign lady Victoria, did [*describe the offence as in the statute*], contrary to the form of the statute in such case made and provided, whereby he hath forfeited the sum of £ — of lawful money of Canada. These are therefore to command you forthwith to levy the said sum of £ — by distraining the goods and chattels of him the said A. B., and if within the space of — days (*not less than four nor more than eight days, by 27 Geo. II., unless otherwise directed by particular statute*) next after such distress by you taken the said sum shall not be paid, together with the reasonable costs and charges of taking and keeping the same, that then you do sell the said goods and chattels so by you distrained, and out of the money arising by such sale that you do pay the sum of £ — part of this said sum of £ — to C. D. of — yeoman, who informed me of the said offence, and the sum of £ — the remainder

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of the said sum of £—— so forfeited, that you do pay to the treasurer of the said county, to be appropriated by him to the purposes of the said county, returning to him the said A. B. the overplus, on demand, the reasonable charges of taking, keeping and selling, the said distress being first deducted; and you are to certify to me, with the return of this precept, what you shall have done in the execution hereof. Herein fail not. Given under my hand and seal, at —— in the said county, the —— day of —— A. D. 18——.

*The like, where part of the penalty goes to the Queen.*

As in the last precedent, till the words "arising by such sale," after which add:—that you do pay the sum of £—— being one moiety (if the act so direct) of the said sum of £—— so forfeited, to me the said justice, for the use of her said Majesty, her heirs and successors; and £—— being the other moiety (or the remainder) of the said sum of £—— so forfeited as aforesaid, that you pay to —— [as the act directs, if in several shares or appropriations, specify each].

*Warrant of Distress for Penalty and Costs, where the penalty has been mitigated.*

County of —— } To the constable of —— in the county of ——  
to wit.

Whereas by a certain conviction under our hands and seals, bearing date the —— day of —— 18——, one A. B. of —— was duly convicted before us, J. C. and S. P., Esquires, two of her Majesty's justices of the peace in and for the county of ——, upon the information of C. D. of —— and on the oath of E. F. a credible witness in that behalf, of a certain offence committed by the said A. B. for that [state the offence as in the conviction, to the words "contrary to the statute," &c.] whereby, and by force of the statute in that case made and provided, the said A. B. was, for his said offence, adjudged to forfeit the sum of £—— [as in the conviction]. And whereas we, the said justices, seeing cause to mitigate and lessen the said penalty, do, at the request of the said A. B. according to the statute, mitigate and lessen the said penalty to the sum of £—— over and above the reasonable costs and charges of the said informer, by him laid out and expended in and about the said information and conviction, to be distributed and applied, one moiety thereof to the use of our lady the Queen, and the other moiety thereof to the said C. D. the informer, and which said costs and charges of the said C. D. the informer, we the said justices do allow, assess and adjudge to him, with his assent, at the sum of £—— of like lawful money, according to the statute in that case made and provided. These are therefore to command you to levy the said sum of £—— and also the said sum of £—— the costs and charges aforesaid, of the said C. D. the informer, making together the sum of £——, by distress and sale of the goods of the said A. B. and we do hereby order and direct, that the said goods and chattels which shall be so distrained, be sold and disposed of within —— days from the time of making the said distress, unless the said sum of £—— for which such distress shall be made, together with the reasonable charges of taking and keeping such distress, shall be sooner paid: and you are hereby

commanded to certify to us, the said justices, what you shall do by virtue of this our warrant. Given under our hands and seals, this — day of — in the year of our Lord 18—.

*Constable's Return of Warrant of Distress, to be endorsed on the Warrant.*

W. S. constable of — within mentioned, maketh oath, this — day of — 18—, that he hath made diligent search for, but doth not know of, nor can he find sufficient goods and chattels of the within mentioned A. B. whereon to levy the within mentioned sum of £— as therein he is commanded.

Sworn, &c.

### DISTRICT COUNCILS.

The 4 & 5 V. c. 10, establishing District Councils in Upper Canada, was repealed by the 12 V. c. 80; and by the Municipal Act of the same session, c. 81, County Municipal Councils are substituted.

See *ante* title "County Councils."

### DISTRICT COURT.

See *ante* title "County Court."

### DIVISION COURTS.

By 13 & 14 V. c. 53, § 1, all former acts are repealed. § 2. The limits to remain as at present until altered, as hereinafter provided. § 3 provides that there shall not be less than *three* courts in each county, nor more than *twelve*: and there shall be one division court held in each city and county town, and that a court shall be holden under this act once in every two months in such division, or oftener, in the discretion of the judge, who shall affix and appoint the times and places. § 4 empowers the justices in general quarter sessions to declare and appoint the number, limits and extent of every such division within their respective counties, subject to the restrictions contained in the act; and from time to time to alter the number, limits and extent of such divisions: Provided, that a less number of justices shall not have power to rescind or alter any order by a greater number at any previous sessions. § 7. Judges of the county courts to preside over such division courts. § 13. Clerks of division courts to issue summonses, furnish copies of particulars of plaintiff's demand and defendant's set off; and issue warrants, precepts and writs of execution, tax costs (subject to revision by the judges) and register judgments, and keep an account of court fees and money paid in and out of court, &c. Any person wrongfully holding or getting possession of such papers, processes or proceedings, accounts, monies, books and matters aforesaid, or

any of the order of the the sheriff until disch courts to se cise the po during the breaches of room or bu hearing of t offending b or other ju jurisdiction mands wha corporate or or account, otherwise, v exceed £25 including the determine th shall have p thereupon an equity and g the payment or commodi viz. upon an ties, or the d or upon a pa for the judg commodities other things money, as i Provided the division cour malt liquors involving the to any custo record. § 2 demand in served at le his wife or s his dwelling ing. *Person* exceeds 40s. the defendan entering suit.

any of them, shall be guilty of a misdemeanor, and may, by order of the judge of any of the superior courts, be arrested by the sheriff and committed without bail (except by a judge) until discharged in due course of law. Bailiffs of division courts to serve summonses and execute writs, &c., and exercise the power and authority of a constable and peace officer during the holding of the court, with full power to prevent breaches of the peace, riots or disturbances within the court room or building, public streets, squares or other places within hearing of the court, and to arrest without warrant all parties offending herein, and to bring them before the nearest justice or other judicial officer. § 23. The judge to have power, jurisdiction and authority to hold plea of all claims and demands whatsoever for or against any person or persons, bodies corporate or otherwise, of debt, account, or breach of contract or account, or money demand, whether payable in money or otherwise, where the amount or balance claimed shall not exceed £25, and in all *torts* to personal chattels to and including the amount of £10; and the judge shall hear and determine the same in a summary way: and every such judge shall have power to make such orders, judgments and decrees thereupon as shall appear to him to be just and agreeable to equity and good conscience; and that upon any contract for the payment of a sum certain in labour or in any kind of goods or commodities, or in any manner otherwise than in money, viz. upon any contract for the delivery of goods or commodities, or the doing of work or labour for value received, or for or upon a past or executed consideration, it shall be lawful for the judge, after the day has past on which the goods or commodities ought to have been delivered, or the labour or other things performed, to give judgment for the amount in money, as if the contract had been so originally expressed: *Provided* that no action shall be brought or tried in any such division court for any gambling debt, nor for any spirituous or malt liquors drunk in a tavern or alehouse, nor for any cause involving the right or title to real estate, or involving any right to any custom or toll. Division courts not to be courts of record. § 24. Plaintiff to enter a copy of his account or demand in writing, to be attached to the summons, and served at least *ten* days before the court on the defendant, his wife or servant, or any grown person being an inmate of his dwelling-house or usual place of abode, trading or dealing. *Personal* service necessary in all cases where the amount exceeds 40s. § 25. Suits to be tried in the division where the defendant resides or carries on business at the time of entering suit, or where debt contracted. § 26. Plaintiff not to

divide cause of action into two or more suits, but any plaintiff having a cause of action above £25 may sue for the same as a *balance*—provided that no unsettled account to a greater amount than £50 shall be sued for in any division court. Judgment of the court in such cases to be in full of all demands.

§ 27. Plaintiffs under the age of twenty-one may sue for claims not exceeding £25 for wages. § 28. No privilege or exemption allowed. § 29. Parties liable on joint demands but residing in different divisions, may be sued separately, and the joint property and separate property of the party served may be sold under execution. § 30. Judge of the court to be sole judge in all matters, unless the amount claimed (in *tort* or *trespass*) exceeds £2 10s.—in other cases £5, and where the parties shall require a jury. § 31. In suits for debt or demand not exceeding £5, the judge may receive affidavits of parties or witnesses residing out of the jurisdiction, if sworn before a judge of a division court or a commissioner, with power for the judge before judgment to require witness or parties to answer interrogatories to be filed. § 32. In actions of *tort* or *trespass* exceeding £2 10s., and in all other cases exceeding £5, either party may require a jury, plaintiff giving notice to the clerk thereof at the time of entering suit, or defendant within five days after service of summons. § 33. The party requiring a jury to pay down the fees mentioned in the schedule. § 34. Separate lists of causes to be made, to be called “the judge’s list” and “the jury list.” The jury list to be first disposed of, except when the judge shall see cause otherwise. § 35. All male persons, subjects, above twenty-one years of age and not above sixty, assessed upon the collector’s roll and resident in the division, shall be liable to serve as jurors, and their names taken from the collector’s roll of the preceding year, and to be summoned in rotation. The collector to furnish clerk of the court with correct lists, and not less than fifteen to be summoned, and three days’ notice given, personally or by leaving the same with a grown up person at the juror’s residence. Parties entitled to their challenge as in other courts. Any jurymen neglecting to attend liable to a fine not exceeding 20s. Serving as juror in division court not to exempt parties from serving on other juries. § 36. Each juror entitled to 6s. for every cause in which he is sworn. § 37. Jury to be composed of five jurors, and their verdict to be unanimous; § 38. The jury may be discharged in case of disagreement and a new jury summoned for next court, unless the parties consent to abide by the decision of the judge on the evidence given. § 39. The Judge to pronounce his decision in court as soon as may be after

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hearing, with power to postpone giving judgment, naming a subsequent day and hour at the clerk's office. § 40. Summonses and writs not to have any blanks. § 41. On the day named in the summons, plaintiff may appear in person or by some person on his behalf (not being the clerk or bailiff), and defendant may answer in like manner. § 42. Evidence to be confined to the demand, or set off entered. § 43. Defendant may plead set off. Statute of Limitations, or discharge under any statute; and if defendant's demand exceeds the plaintiff's, plaintiff may be *nonsuited*; or if defendant's demand, after remitting any portion, does not exceed £25, court may give judgment for the balance found in his favour. No statutory defence admissible unless notice in writing and copy of set off delivered to the plaintiff or left at his place of abode, if within the division, or if living without the division to the clerk of the said court, six days before trial or hearing. Judgment given in favour of the defendant to be in full discharge. § 44. Judge of the court empowered to make rules of practice, to be first submitted to the judges of the Queen's Bench, or Common Pleas for approval. § 45. In case of defendant not appearing at the court, the plaintiff may proceed to hearing or trial on proof of service of the summons; and in case of personal service of the summons, with detailed particulars of plaintiff's claim (except in *tort* or *trespass*), the judge may in his discretion give judgment without further proof. But the judge may grant time to plaintiff or defendant for proceeding. § 46. Defendant may pay money into court, with the costs incurred, not less than six days before trial; and notice shall be given thereof to plaintiff by the clerk, and the same shall be paid to plaintiff and proceedings stayed, unless plaintiff shall within *three* days after receipt of notice signify to the clerk his intention to proceed for the remainder; and if plaintiff fail, he shall pay to the defendant costs to be settled by the court. § 47. False swearing to be *perjury*. § 48. Either party may obtain from the clerk a summons for witnesses, with or without production of books, papers and writings, to be served by any *literate* person personally on the witness, or at his or her usual place of abode, and *tender* made of expenses; and witness neglecting to appear (without sufficient cause), or to produce books, &c. required, and any person called upon in court to give evidence, and refusing, shall forfeit and pay such fine not exceeding £2 as the judge shall fix, and be liable to imprisonment for any term not exceeding ten days; such fine to be applicable to the party injured. Subpoenas may be issued from superior courts for attendance of witnesses residing in any part of Upper Canada. § 49. Clerk to enter suits, orders and judgments, executions and returns, in a book, and

the same to be evidence in all cases. § 50. The judge may make orders concerning the time or times and proportions for payment of debt and costs. Issuing of execution not to be postponed for more than *fifty* days after service of the summons. § 51. In case of cross judgments, execution to issue for the balance only on the largest judgment. If judgments be equal, satisfaction on both to be entered. § 52. Costs not to be allowed in suits brought on *judgments* in this court without the order of the judge on sufficient cause shewn. § 53. In case of default in payment of money ordered to be paid, execution may be issued by the clerk against the goods and chattels of the party, at the request of the party entitled, with interest from the date of the judgment. § 54. The bailiff or clerk may take *confessions*. § 55. In case of the party against whom judgment shall be given removing to another county, the judge of the division court there may order execution to issue for the amount, upon production of a certified copy of the judgment. § 56. Every writ of execution to be dated when issued, and returnable in thirty days. § 57. Judgments above 10*l.* to bind lands upon return of *nulla bona*; and on filing a transcript of the judgment in the county court, the same to stand as a judgment of such county court, with the like powers and remedies. § 58. Any party obtaining judgment exceeding 10*l.* may, within fourteen days, obtain a certificate and register the same, and bind the lands. § 59. Bailiff neglecting to return writ of execution within *three* days after the return thereof, or making a false return, liable (and his sureties) to be sued for the amount of such execution and interest from the date of judgment. § 60. No sale under execution to take place until after the end of *eight* days next following the day of seizure; and the goods to be advertised at least eight days before sale. § 61. Bailiff not to purchase goods at such sales. § 62. Suits against clerk or bailiff may be brought in the next adjoining division court. § 63. The judge may order immediate execution to issue, on plaintiff proving to the satisfaction of the judge that the debt is in danger. § 64. Attachment may be issued by the clerk of the court, judge of the county court, or justice of the peace, against the personal estate and effects of any absconding or concealed debtor, for any sum not exceeding 25*l.* nor less than 20*s.*, on application by plaintiff, supported by affidavit, according to schedule D, or a sufficient portion to secure the debt and costs—bailiff seizing to make an inventory, and within *twenty-four* hours afterwards to cause the same to be appraised by two freeholders, who shall be entitled to 2*s.* 6*d.* each, to be paid in the first instance by the plaintiff. § 65. In case of several attachments issuing, pro-

ceeds to be judgment, allowed to notice given attachment from issuing under attachment court. 67. And, with double the one month execution provided, in case of summons before forthwith a § 69. In case of the same, the copy at his person dwelling if no payments with Cattle and plaintiff at return of the Residue, as to the defect of the goods to the extent may be recovered parties. § officer of the may be taken default of for any period costs and of the court ing or accountable to the judge amount of distress, or commit the exceeding taking high being employed § 78. No co-



ceeds to be distributed ratably among such creditors obtaining judgment, in proportion to their judgments: attaching creditors allowed to share only provided attachment be sued out, and notice given to clerk of division court out of which the first attachment issued, or shall be returnable within *one month* from issuing such first attachment. § 66. All property seized under attachment to be handed over to the clerk of the division court. 67. Property may be restored on defendant tendering bond, with sureties to be approved by the judge or clerk, in *double* the amount claimed. § 68. If bond not given within one month from seizure, as soon as judgment has been obtained, execution may be immediately issued and property sold: Provided, in case defendant has been personally served with summons before seizure, the trial is to proceed, and execution forthwith awarded after judgment, unless otherwise ordered. § 69. In cases of attachment, and defendant not previously sued, the summons may be served personally or by leaving copy at his last place of abode, trade or dealing, with any person dwelling there, or by leaving the same at the dwelling if no person be there found: creditors suing out attachments without probable cause, not entitled to costs. § 70. Cattle and perishable goods may be sold at the request of the plaintiff at *eight days'* notice, on giving bond with sureties for return of the value, in case he shall not obtain judgment. § 71. Residue, after satisfying judgments and costs, to be returned to the defendant or his agent, or the party in whose custody the goods were found. § 72. Plaintiff's *books* to be evidence to the extent of *5l.*, except in *tort* or *trespass*. § 73. Judgments may be revived against personal representatives of deceased parties. § 75. Any person wilfully insulting the judge or any officer of the division court, or interrupting the proceedings, may be taken into custody and fined not exceeding *£5*, and in default of *immediate* payment committed to the common gaol for any period not exceeding one calendar month, unless fine, costs and expenses sooner paid. § 76. Any bailiff or officer of the court guilty of *extortion* or misconduct, or not duly paying or accounting for monies levied or received, shall be liable to such order for repayment, with damages and costs, as the judge shall think just; and in default of payment the amount shall be levied by distress and sale; and in default of distress, or *summarily in the first instance*, the judge may commit the offender to the common gaol for any period not exceeding three calendar months. § 77. Any clerk or officer taking higher fees than allowed by law, shall be incapable of being employed again under this act, and liable to damages. § 78. No costs allowed in superior courts unless the judge shall

certify that it was a fit cause to be withdrawn from the division court; but costs as between attorney and client shall be allowed to the defendant against the judgment. § 79. Want of form not to vitiate proceedings upon any levy or distress under this act. § 80. Executors and administrators may sue and be sued in this court. § 81. Parties to the suit may be examined upon oath, at the instance of the opposite party or the judge. § 82. Fines to be enforced by order of the judge. § 83. Costs of the division court not otherwise provided for to be apportioned between the parties as the judge shall think proper; and in cases where the plaintiff shall not appear, or shall not prefer his demand, the judge may award costs to the defendant and a further sum for his trouble and attendance. § 84. Judgment of the court to be final, with power to order new trial upon terms, if applied for within *fourteen* days and good grounds shewn. § 85. Suit brought in this court may be removed into any of the superior courts by *certiorari*, if the amount claimed shall amount to £10 and upwards. § 86. Division court to have a seal, and process to be stamped therewith. Forging, or *knowingly* serving forged process, or copy, or acting under the same, to be *felony*. § 87. Summons to be served out of the division, may be served by the bailiff of such other division. § 88. And such service may be proved by affidavit sworn before any judge or clerk of a division court, or a commissioner. Fee for drawing affidavit 6d., and oath 6d., and no more. § 89. Bailiff acting under execution may seize and take any goods or chattels of defendant (*wearing apparel and bedding of such defendant or his family, and his tools and implements of trade to the value of £5 excepted*) money or bank notes, cheques, bills of exchange, promissory notes, bonds, specialities, or securities for money. § 90. Plaintiff may sue on such notes, &c., in the name of the defendant, on giving security for costs. § 91. Any plaintiff may summon the defendant upon any unsatisfied judgment to appear before any division court where he shall dwell or carry on business, to be examined upon oath touching his estate and effects, the circumstances under which the debt was contracted, and the means or expectation he then had of paying the same, and as to his present property and means. § 92. Defendant not appearing, or refusing to be sworn, or not answering to the satisfaction of the judge, or if it shall appear that *credit* was obtained under false pretences, or by fraud, or breach of trust, or that the debt was contracted without a reasonable expectation of being able to pay, or if defendant shall have made any gift, delivery, or transfer of any property, or removed or concealed the same with intent to defraud his creditors, or if it shall appear to the satisfaction of the judge

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that the defendant had then, or since the judgment obtained sufficient means of payment, by instalment or instalments as ordered by the court, in which judgment was obtained, and he shall have neglected to pay, it shall be lawful for the judge to *commit such party to the common gaol* of the county for any period not exceeding *forty* days. § 93. The judge may, if he think fit, rescind or alter any order previously made against any defendant, for payment by instalment or otherwise, and make a new order. § 94. The judge, at the hearing of any cause, if the defendant shall appear and judgment be given against him, shall have the same power of examining the defendant and the plaintiff and other parties, touching the matters aforesaid, and of committing the defendant to prison, as he might have done under the provisions before mentioned. § 95. Commitment to be by warrant under seal of the court, and obeyed by all constables and peace officers, &c. § 96. Such imprisonment not to extinguish the debt, nor prevent imprisonment for other causes. § 97. Warrant of execution or commitment may be executed by the bailiff out of the county, or sent to the clerk of the division court there, and may be executed by bailiff of such other court. § 98. The judge may, if he think fit, stay judgment, order or execution, in case of sickness or other sufficient cause shewn upon oath. § 99. Defendant may be discharged out of custody on payment of debt and costs. § 100. Any person assaulting any officer in the execution of his duty, or attempting rescue of goods seized, shall be liable to a fine not exceeding £5, to be recovered by order of the court, or before a justice of the peace of the county, (and to imprisonment not exceeding three calendar months) and such officer may take the offender into custody, with or without warrant, and bring him before the court or justice. § 101. Any bailiff neglecting to make levy under execution, shall be liable to pay such damages by order of the court as the plaintiff shall sustain, not exceeding such levy. § 102. If any claim be made to goods taken in execution or by attachment, by a third party, the clerk of the court (or the bailiff) may summon the plaintiff and the claimant before the next Division Court, and the judge shall adjudicate upon such claim. § 103. Penalties, fines and forfeitures imposed by this act (and not otherwise directed to be applied) shall be paid over to the county treasurer as part of the *fee fund*. § 104. In all cases where by this act any penalty or forfeiture is made recoverable before a justice of the peace, such justice may summon the party, and on return of such summons hear and determine the complaint, and on proof of offence convict the offender and adjudge him to pay the penalty or forfeiture incurred, and proceed

to recover the same, though no information in writing shall have been exhibited before him, and such proceedings shall be as valid as if information had been exhibited in writing.

§ 105. The form of conviction to be in the words or to the effect following :

Be it remembered, That on this — day of —, in the year of our Lord —, A. B. is convicted before —, one of Her Majesty's justices of the peace for the county of —, or before a judge acting under an act passed in the — year of the reign of Her Majesty Queen Victoria, intituled "An Act, &c., (insert the title of this act) of having (*note the offence*) ; and I (*or we*) — the said — do adjudge the said — to forfeit and pay for the same the sum of —, or to be committed to the common gaol of the county of —, for the space of —. Given under — hand and seal the day and year aforesaid.

§ 106. No order, verdict or judgment to be quashed for want of form. § 107. Actions brought against any person acting under this act, to be brought and tried in the county where the fact was committed, and within six calendar months, and *one calendar month's* previous notice in writing to be given of such action. Defendant may tender amends, and plead the general issue. § 108. The plaintiff bringing such action in any superior court, and not recovering more than *£l. 10s.* damages, not entitled to costs, unless the judge shall certify. § 109. Power given to the executive to regulate the holding of courts where business may not require the court to be held every two months. § 110. Clerks of division courts to make half-yearly returns *upon oath* of all fees and emoluments. § 111. Interpretation clause. § 112 relates to proceedings under former acts. § 113. This act to come in force on the first day of January 1851, and not before.

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TABLE OF FEES.

	Not exceeding \$1.	Exceeding \$1. and not exceeding \$1.	Exceeding \$1. and not exceeding \$2.	Exceeding \$2. and not exceeding \$3.	Exceeding \$3. and not exceeding \$4.
<b>JURY FUND.</b>					
Entering account and issuing summons .....	0 4	0 8	1 2	2 0	3 0
Hearing an undefended cause .....	0 6	0 0	1 3	3 0	3 0
Hearing a defended cause .....	1 0	2 0	3 0	5 0	7 0
Every order or judgment (not to be charged when the defendant has given a confession of judgment) .....	0 3	0 6	0 9	1 3	2 0
On every confession of judgment .....	0 3	0 3	0 3	0 6	0 6
<b>CLERK'S FEES.</b>					
Entering every account and issuing summons .....	0 6	0 3	1 0	1 3	1 6
Copy of summons, particulars of demand or set off, when not furnished by plaintiff or defendant, each .....	0 3	0 6	0 6	0 6	0 6
Every Summons to Witness, in which any number of names may be included .....	0 3	0 3	0 3	0 3	0 3
Adjournment of any cause .....	0 3	0 6	0 9	0 9	0 9
Entering set off or other defence requiring notice to the plaintiff .....	0 6	0 9	1 0	1 0	1 0
Entering every judgment .....	0 6	0 6	0 9	1 0	1 0
Every search into a proceeding over a year old .....	0 6	0 6	0 6	0 6	0 6
Taking confession of judgment .....	0 6	0 6	0 6	0 6	0 6
Every Warrant, Attachment, or Execution .....	0 6	1 0	1 6	1 6	1 6
To the clerk for taking charge of and keeping the property seized, such sum as the judge may order in each particular case.	1 3	1 3	1 3	1 3	1 3
For every copy or Certificate of Judgment to another county .....	..	5 0	5 0	5 0	5 0
Deposit to be paid by party requiring jury .....	..	0 6	0 9	1 0	1 3
Entering and giving notice of jury being required .....	..	0 6	0 9	1 0	1 3
Making out summons for the fifteen jurors, to be apportioned between and paid in the first instance by parties applying for juries .....	..	3 3	2 6	6 6	5 0
<b>THE BAILIFF'S FEES.</b>					
Service of Summons, or other proceeding, except Subpoena on each person .....	0 4	0 6	0 9	0 9	1 0
Service of Subpoena on each witness .....	0 4	0 4	0 4	0 4	0 4
For taking confession of judgment .....	0 4	0 6	0 6	0 6	1 0
Drawing and attending to swear to every affidavit of service of Summons, when served out of the Division .....	1 0	1 0	1 0	1 0	1 0
Enforcing every Warrant, Execution, or Attachment, against the goods or body .....	1 6	1 6	2 0	3 0	3 0
For every mile necessarily travelled from the clerk's office, to serve Summons or Subpoena, and in going to seize on execution where money made or case settled after the levy, &c.	..	0 6	0 9	1 0	1 3
For every jury trial .....	..	0 6	0 9	1 0	1 3
For carrying delinquent to prison, including all expenses and maintenance, per mile, is.	..	2 0	2 6	3 6	5 0
Every Schedule of property seized, return, including affidavit of appraisal .....	..	2 0	2 6	3 6	5 0
Every Bond, including affidavit of justification .....	..	2 0	2 6	3 6	5 0
Every notice of sale, not exceeding three, under execution, on each amount, &c. each.	..	2 0	2 6	3 6	5 0
That there be allowed to the Bailiff, upon the sale of property under any execution the sum of 2½ per cent. upon the amount realised, and not to apply to any overplus on the said execution.	..	..	..	..	..

## DOGS.

By the municipal act, 12 Vic. c. 81, the several municipalities are empowered to make by-laws for imposing a tax on the owners, possessors or harbourers of dogs, and for regulating their running at large, and destroying the same if found running at large.

**DOWER.**

The wife is entitled by law to be endowed of one-third part of all such lands and tenements of which her husband was seised in fee-simple or fee-tail, at any time during the coverture or marriage: to hold the same during the term of her natural life.—*Co. Litt.* 31. But that she might be entitled thereto, she must be the wife of the party at the time of his decease; for if she be divorced *a vinculo matrimonii*—that is, from the band of matrimony—she shall not be endowed. By statute 13 *Edw. I.* c. 34, if a woman elope from her husband and live with an adulterer, she shall lose her dower, unless her husband be voluntarily reconciled to her. And the widows of traitors, or persons attainted of treason, are barred of dower; but not the widows of felons.—2 *Black*, 131. An alien cannot be endowed, unless she be queen consort; for no alien is capable of holding lands.—*Co. Litt.* 31. The wife's dower may also be excluded by the husband taking a conveyance to himself and a trustee.—*Co. Litt.* 31. And a wife cannot be entitled to dower out of an estate which at the time of her marriage was subject to a mortgage in fee.—*Co. Litt.* 208, note 1, 13 *edit.* But upon the mortgage being paid off, and the estate reverting to her husband, the wife then will become dowable.

*The mode of Barring Dower.*

\* The statute 3 *Wm. IV.* c. 10, prescribes the form and manner in which dower may be barred before any two justices; but now by the \*2 *Vic. c. 6*, § 3, whenever any married woman shall join with her husband in any deed of conveyance whatever (wherein a release of dower is contained), it shall not be necessary to acknowledge the same before any court, judge, or justice of the peace, but such execution shall be deemed a valid and effectual bar of dower of and in the premises described in such deed or conveyance.

See 13 *V.*, c. 58, for the recovery of dower by action at law.

**DUELLING.**

By 10 & 11 *Vic. c. 6*, § 3, the principal as well as the seconds are rendered liable to be sued for damages by the executor or administrator of any person whose death shall be caused in a duel, and the amount shall be apportioned among the surviving relations, as the jury shall by their verdict direct.

See also *post* title "Homicide."

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## ELECTIONS.

By the imperial statute of the 31 Geo. III. c. 31, commonly called the "*Act of Constitution*," certain provisions were made for composing and constituting a Legislative Council and Assembly in each of the provinces of Upper and Lower Canada:

§ 20. The members for the several districts, or counties, or circles, shall be chosen by the majority of votes of such persons as shall be possessed, for their own use, of freehold lands or tenements within such district or county, or circle, of the yearly value of 40s. sterling, or upwards, over and above all rents and charges: and the members for the towns or townships shall be chosen by the majority of votes of such persons as shall be possessed, for their own use, of a freehold dwelling-house and lot of ground, in such town or township, of the yearly value of 5*l.* sterling, or upwards; or as having been resident within such town or township for the space of twelve calendar months next, before the date of the writ of summons for the election, shall, *bona fide*, have paid one year's rent for the dwelling-house in which they shall have so resided, at the rate of 10*l.* sterling per annum, or upwards. § 21. No person shall be eligible to sit or vote in such assembly, who shall be a member of the legislative council, or a minister of the Church of England, or a minister, priest, ecclesiastic, or teacher, either according to the rites of the Church of Rome, or under any other form or profession. § 22. No person shall be capable of voting at any election, or of being elected, who shall not be of the full age of twenty-one years, and a natural born subject, or naturalized by the British parliament; or a subject by the conquest of Canada; nor any person attainted for treason or felony; or who shall be within any description disqualified by the provincial legislature. § 24. Every voter, before he is admitted to vote, shall, if required by any of the candidates, or by the returning officer, take the following oath:

I, A. B. do declare and testify, in the presence of Almighty God, that I am, to the best of my knowledge and belief, of the full age of twenty-one years, and that I have not before voted at this election.

And every person shall also, if required, make oath previous to his being admitted to vote, that he is, to the best of his knowledge and belief, duly possessed of such lands and tenements, or of such a dwelling-house, as entitles him to vote at such election. § 29. No member shall sit till he has subscribed the following oath, before the governor, lieutenant-governor, or person administering the government, or before some person or

persons authorised by the said governor, &c. to administer such oath :

I, A. B. do sincerely promise and swear, that I will be faithful, and bear true allegiance to his Majesty King George, as lawful sovereign of the kingdom of Great Britain, and of these provinces, dependent on and belonging to the said kingdom ; and that I will defend him to the utmost of my power against all traitorous conspiracies and attempts whatever which shall be made against his person, crown and dignity ; and that I will do my utmost endeavours to disclose and make known to his Majesty, his heirs or successors, all treasons and traitorous conspiracies and attempts, which I shall know to be against him or any of them ; and all this I do swear without any equivocation, mental evasion, or secret reservation, and renouncing all pardons and dispensations from any person or power whatever to the contrary. So help me God.

By the imperial statute 3 & 4 Vic. c. 35, intituled, "An act to re-unite the provinces of Upper and Lower Canada, and for the government of Canada," so much of the 31 Geo. III. c. 31, as provides for the constituting and composing of such legislative council and assembly, is repealed, and other provisions are made for composing one legislative council and one assembly within the province of Canada ; the last mentioned statute however enacts, that until otherwise provided by the legislature of the said province of Canada, the laws in force at the time of passing this act, in Upper Canada, relating to the qualification and disqualification of members of assembly, and voters at election (except as provided by the act respecting the *property* qualification of members) and to the oaths to be taken by any such voters, and to the powers and duties of returning officers, and the proceedings at elections, &c. shall continue in force with regard to the election of members of assembly for that portion of the province. § 28. No person shall be capable of being elected a member of the legislative assembly of *Canada* who shall not be legally or equitably seized as of freehold, for his own use and benefit, of lands or tenements, held in free and common soccage, or seized or possessed, for his own use and benefit, of lands or tenements, held in fief or en roture, within the said province of Canada, of the value of 500*l.* sterling, over and above all incumbrances ; and every candidate, before he shall be capable of being elected, shall, if required by any other candidate, or by any elector, or by the returning officer, make the following declaration :

I, A. B., do declare and testify, that I am duly seized at law, or in equity as of freehold, for my own use and benefit, of lands or tenements held in free and common soccage (or duly seized or possessed, for my own use and benefit, of lands or tenements held in fief or en

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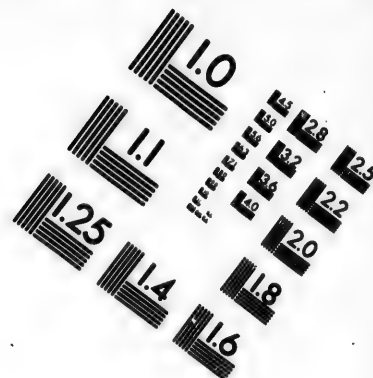
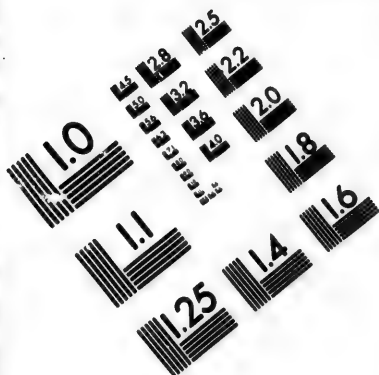
nature (as the case may be), in the province of Canada, of the value of five hundred pounds of sterling money of Great Britain, over and above all rents, mortgages, charges and incumbrances, charged upon or due and payable out of or affecting the same; and that I have not collusively or colourably obtained a title to or become possessed of the said lands and tenements, or any part thereof, for the purpose of qualifying or enabling me to be returned a member of the Legislative Assembly of the province of Canada.

§ 29. Making a false declaration shall be deemed a misdemeanor, and punishable as wilful and corrupt perjury.

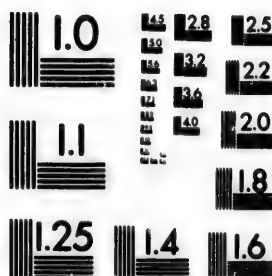
### *Members of Parliament for Upper Canada.*

By 7 V. c. 65 (reserved, and assented to 17th April 1844), the following persons are by § 1 declared to be disqualified from being members of the Legislative Assembly, viz:

All justices or judges of any court of Queen's Bench or of King's Bench—the Vice Chancellor of Upper Canada—the judge of the Court of Vice Admiralty in Lower Canada—the judge of the Court of Escheats—all district judges or circuit judges—all commissioners of bankrupts—the official principal of the Court of Probate in Upper Canada—the surrogates of the several Surrogate Courts of Probate in the same—all recorders of cities, sheriffs, prothonotaries, or clerks of any court of Queen's Bench or King's Bench, or of any district or circuit court—clerks of the Court of Appeal—clerks of the peace—registrar of the Court of Vice Admiralty in Lower Canada—clerks of the crown—clerks of commissioners of bankrupts—registrar, master, or accountant of the Court of Chancery in Upper Canada—registrar of the Court of Probate in the same—clerk to the Heir and Devisee Commissioners—registrars of deeds and titles to, or claims and incumbrances upon real property in Upper or Lower Canada—officers of the customs and excise—all officers employed in the collection of the revenue arising from duties, or tolls for the use of the public works, including the naval officers at the port of Quebec—commissioner for the management of the Jesuits' estates—the resident agent for the sale of public lands—agents for the sale of timber licences—adjutants general of militia—clerks employed under them and receiving salaries—clerk of the Executive Council, and all subordinate clerks or officers of the said Council receiving annual salaries—clerks in the office of the Provincial Registrar receiving annual salaries—all subordinate clerks receiving annual salaries in the offices of the Secretaries for Upper or Lower Canada, of the Commissioner of Crown Lands, Receiver General, or Inspector General of public provincial accounts (excepting always the assistant secretaries for Upper and Lower Canada, assistant commissioner of crown lands and the assistant inspector general of public provincial accounts)—all subordinate clerks receiving annual salaries in the office of the Surveyor General—officers of the Board of Works, or persons employed by the said Board while so employed—all contractors with the said Board, or



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with any other department of the provincial government for performing any work or supplying anything required for the public provincial service, or to be paid for out of the public monies of the province during the subsistence of such contracts—the postmasters at Quebec, Montreal, Three Rivers and Sherbrooke, and at any city or town in Upper Canada incorporated or divided into wards—all physicians, officers and persons employed in the Quarantine at Quebec or Grosse Isle, and paid out of the public moneys, when so employed—all physicians or surgeons attending any common gaol, penitentiary, lunatic asylum, hospital or other public institution, and receiving annual salaries or allowances out of the public monies of the province—all harbour masters or deputies, and the master and registrar of the Trinity House of Quebec or Montreal, and all persons employed under the said Trinity Houses and receiving annual salaries or allowances—her Majesty's printer and law printer in and for this province—the translator of the laws: *Provided always* that nothing in the foregoing enactment shall extend to any person who, being a member of the Executive Council, shall also fill any of the following offices, viz.—Receiver General, Inspector General, Secretary of the Province, Commissioner of Crown Lands, Attorney General, Advocate General, Solicitor General, Chairman of the Board of Works, Registrar of the Province, or Surveyor General.

§ 2. All elections of persons disqualified by the first section after the passing of this act, declared to be null and void, and the parties subject to a fine of £500 for every day they shall presume to sit or vote. § 3. The following persons are disqualified from voting at any election, viz.—all justices or judges of any court of Queen's Bench or King's Bench, the Vice Chancellor of Upper Canada, the judge of the Court of Vice Admiralty for Lower Canada, the judge of the Court of Escheats, district or circuit judges, and all clergymen of the Church of England or Scotland, and all priests and ministers either according to the rites of the Church of Rome, or under any other form or profession of religious faith or worship. All commissioners of bankrupts, the official principal of the Court of Probate in Upper Canada, and the surrogates of the several surrogate courts of probate in the same, and all recorders of cities, all officers of customs, and all officers employed in the collection of any duties payable to her Majesty in the nature of duties of excise, under the penalty of £500. § 4. Seats of members of the Legislative Assembly accepting from the crown any office of profit shall be vacant and elections void, and a new writ shall forthwith issue for a new election: *Provided always* that such members may be re-elected if not otherwise disqualified under this act. § 5. The foregoing sections not to apply to officers in the army or navy or militia, excepting only officers on the staff of the militia receiving permanent salaries. § 6. Any member may vacate his seat as hereinafter

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provided. § 7. By giving in his place notice of his intention of resigning, in which case, and immediately after such notice shall have been entered by the clerk, it shall be lawful for the speaker to issue his warrant for the election of a new member; or by addressing to the speaker a declaration to that effect made under his hand and seal before two witnesses, either during a session or in the interval between two sessions. § 8. The member so resigning to continue to sit until the return of the election of a member in his room. § 9. No member to resign during the session before the expiration of the first fifteen days; and no member whose election shall be contested shall resign or vacate until such contest shall have been decided. § 10 provides how a new writ shall be issued when a member resigns during the absence of the speaker. § 11. In case of any vacancy arising by the death of the member, or being summoned to the Legislative Council, or acceptance of office, it shall be the duty of the speaker, on information given to him by any member in his place, or in writing, under the hands and seals of any two members, to give notice thereof, by warrant to the clerk of the crown in chancery, that a new writ may issue for the election of a member to fill up such vacancy, and such writ shall issue accordingly.

§ 12 repeals 4 & 5 V. c. 4; 6 V. c. 2; 39 G. III. c. 4; 7 W. IV. c. 114; and all other acts inconsistent or repugnant with this act.

By 8 V., c. 10, so much of the 7 V., c. 65, as declares clergymen of the Church of England or Scotland, priests or ministers under any form of religious faith or worship, incapable of voting at elections is hereby *repealed*.

By 12 V., c. 27, § 1, former acts—4 G. IV., c. 3; 3 W. IV., c. 11; 4 W. IV., c. 14; 4 & 5 V., c. 52; 6 V., c. 1 are repealed. § 2. relates to Lower Canada.

*Returning Officers.*—§ 3. The sheriffs for districts in Upper Canada shall be *ex officio* returning officers, and registrars of deeds shall be *ex officio* returning officers for cities and towns having representation: provided always that the high sheriff of the Home District shall be returning officer for the West Riding of the County of York, and the registrar *ex officio* returning officer for the East Riding and North Riding of the same county; § 4, writs of election to be addressed accordingly. § 5. Sheriffs and registrars, if members of the Legislative Council, to be disqualified as returning officers; and in such case, or in case of death, or absence, or other incapacity, the Governor, as heretofore, may appoint any qualified person to be returning officer; such person to be an elector and a resident twelve months preceding his appointment; any unqualified person acting shall

be subject to a penalty of £50. § 6. The following persons are disqualified from acting as returning officer, deputy, election or poll clerk, viz.—1st, members of the Executive Council; 2nd, members of the Legislative Council; 3rd, members of the Legislative Assembly; 4th, any minister, priest, ecclesiastic, or teacher under any form of faith; 5th, judges of superior courts, and judges of circuit courts and district courts; 6th, members of Legislative Assembly in the session next immediately preceding the election, or in the then present session, under a penalty of £50. § 7. The following persons are exempt from serving unless they be sheriffs, or registrars, or town clerks, or assessors:—1st, physicians and surgeons; 2nd, millers; 3rd, postmasters; 4th, persons 60 years of age and upwards; 5th, persons who shall have previously served as returning officers. § 8. Any person refusing to act as returning officer shall be liable to a penalty of £50, unless claiming exemption within two days after the receipt of writ.

*Place of Election.*—§ 9. The Returning officer, on receiving the writ, shall endorse thereon the date of receipt, and within eight days next after date of reception shall, by proclamation under his hand, in the form A. of schedule annexed, fix the place, day and hour of election, to be posted up at least eight days before the nomination day; and the place of election shall be in the public place most central and convenient for the great body of the electors; the hour fixed to be between eleven in the forenoon and two in the afternoon; the proclamation also to fix the day of polling in each place; if for a city, or town, such proclamation to be posted at the city or town hall and some public place in each ward, and if for a county or riding, at the town hall, where there is one, and at least one other public place; the nomination day and day of posting not to be included in the eight days. Penalty for neglect, £25. § 10. Returning officer to make and subscribe before a justice of the peace the oath of office, (No. 1.) in the schedule, before the day of election, and such justice shall, under a penalty of £10, deliver to him, in the form B, a certificate of his having taken the oath, to be annexed to his return to the writ. Any returning officer neglecting the above shall incur a penalty of £10. § 11. Returning officer, before the day of nomination, shall appoint, in form C., an election clerk, who shall make and subscribe before a justice of the peace, or before the returning officer, the oath (No. 2) in said schedule, and shall obtain a certificate thereof in form D; and in case of refusal to act or be sworn, shall incur a penalty of £10. In case of death, illness, or absence of election clerk, such returning officer may appoint

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*Polls.*—each parish building in cities and provided in and that shall vote upon which penalty of demanded immediate day and p six days election another ce and one o be held on each place unless Su then on the forenoon, Returning polls, who a justice certificate take the o in counties and in cas or collector in form H justice, or shall deliver

another, subject to the same liabilities; and in case the returning officer shall become unable to perform the duties of his office, by death, illness, absence, or otherwise, such election clerk shall act as returning officer, under the like penalties.

**Proceedings at Elections.**—§ 12. The Returning officer shall proceed to the hustings at the time and place appointed, (*in the open air*), and shall make proclamation in form E,—read the writ of election, and his commission,—and shall then require the electors present to name candidates; and if no poll be demanded the election shall be closed and members proclaimed; if poll demanded by any elector or candidate, the returning officer shall grant such poll; and in case of refusal such election shall be *ipso facto* null, and returning officer incur a penalty of £200.

**Polls.**—§ 13. The poll to be opened and kept separately in each parish, township, or union of townships, or ward, in some building near where the last township meeting was held, and in cities and towns at the most convenient place in each ward—provided it be not a tavern or place of public entertainment, and that there be free access to every elector; and electors shall vote at the polling place within the limits of the property upon which they vote, and not at any other poll, under a penalty of £10. § 14, 15, relate to Lower Canada. § 16. If poll demanded on the nomination day, the returning officer shall, immediately after granting such poll, publicly proclaim the day and place of polling in each parish, &c., and shall allow six days at least, and not more than ten, between the day of election and polling. Proceedings to be then adjourned to another certain day to be called the day of closing the election, and one of the ten days above mentioned. § 17. Polls not to be held on certain *feast days*, and shall be the same day in each place, and shall be held on that and the following day, unless Sunday or one of the holy days above mentioned, and then on the following day, to commence at nine o'clock in the forenoon, and finish at five in the afternoon of each day. § 18. Returning officer to appoint deputies in form F, for taking the polls, who shall take and subscribe the oath (No. 3) before a justice or the returning officer, who shall deliver him a certificate thereof in form G: and in case of refusal to act or take the oath, he shall incur a penalty of £25: Provided, that in counties or ridings the town clerk shall be appointed deputy, and in case of his absence, sickness or death, then the assessor or collector of such township: and every deputy shall appoint, in form H, a poll clerk, who shall take and subscribe before a justice, or returning officer, or deputy, the oath (No. 4), who shall deliver him a certificate thereof, in form J; and in case of

refusal to act or take the oath, such poll clerk shall forfeit £10. In case of death, illness, or absence of deputy returning officer, or refusal to act, returning officer to appoint another, under the same liabilities. § 19. Returning officer, by warrant in form K, shall require deputies to open and hold the polls, and take and record the votes, and return to him the poll book, signed and sealed, on or before the day for closing the election. § 20. Deputy returning officers to record in such poll books, and in the order they shall be given, the votes of the electors, by entering the names, surnames, legal addition and residence of each elector voting, and by inserting the word "proprietor" or "tenant" in the poll book, according to his right of voting. § 21. Poll clerks to aid and assist deputy returning officer and obey his orders, and in case of neglect, death, illness, or absence of deputy returning officer, poll clerk (under the like penalties) to act as deputy without taking any new oath; and in such case he shall appoint, in form H, another person as poll clerk, and administer to such person the oath of poll clerk; and in case of neglect, refusal or incapacity of any poll clerk, the deputy returning officer may appoint another, in the form H.

*Poll Book.*—§ 22. Every poll clerk, after closing the poll and before the return of the poll book, shall make and subscribe before a justice, or the deputy returning officer, or returning officer himself, the oath in form M, to be annexed to the poll book; and the deputy shall, before returning the poll book, make and subscribe before a justice, or the returning officer, the oath in form N, to be annexed to the poll book; and he shall then return the poll book to the returning officer, on or before the day of closing the election; and any deputy or poll clerk neglecting any of his aforesaid duties shall, for each neglect or refusal, incur penalties, viz.,—the deputy £50, and poll clerk £25. § 23. On the day for closing the election the returning officer shall, at the appointed hour and place, in the presence of the electors, ascertain the state of the general poll, and then and there openly proclaim as duly elected the person or persons having a majority of the total number of votes; but the returning officer shall not proclaim any person duly elected unless all the poll books shall have been returned. § 24. If poll books not returned, the proceedings to be adjourned from day to day until all the books returned. § 25. After close of the election, the returning officer shall forthwith execute, under his hand and seal and the hands and seals of at least three electors, an indenture in the form O, in duplicate or triplicate, as the case may require; one copy to be delivered to each person elected, and one copy to be transmitted by him to the clerk of the crown in chancery with the return of the writ. § 26. In case

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any poll book shall be stolen, lost, or destroyed, the deputy returning officer shall report the same personally to the returning officer, and the poll clerk shall also attend the returning officer and be examined by him on oath as to such loss and the contents thereof; examination to be in writing and annexed to the return, and the number of votes the returning officer shall by this means find to have been recorded for each candidate shall be included in his summing up the votes, as if taken from such poll book; any deputy or poll clerk refusing to attend or be sworn, shall be subject to a penalty of £50, and in case of refusal to be sworn shall be committed by the returning officer to the common gaol of the county or district, until discharged by order of the House of Assembly. § 27. The returning officer shall make, or cause to be made, exact copies of all the poll books, and within ten days after close of the election deposit the same, duly certified, in the office of the registrar of deeds, and such registrar shall allow inspection to any person, on payment of 1s., and allow such person to take a copy of the same at his own expense; the originals to be then transmitted with the writ of election to the clerk of the crown in chancery, within fifteen days after closing the election.

*Scrutiny.*—§ 28. No scrutiny to be granted, except as to each vote before it is recorded.

*Agents.*—§ 29. In the absence of any authorised agent, any elector in the interest of a candidate may act as agent; and any council, agent, attorney, or clerk who shall receive or expect to receive, during or after the election, from any candidate or other person, for acting in such capacity, any money, fee, office, place or employment, or any promise, pledge or security therefor, shall be incompetent to vote at such election—his vote shall be void, and he shall incur thereby a penalty of £25.

*Qualification of Voters.*—§ 30. No person shall be entitled to vote at any election for a county or riding, unless at the time possessed for his own use as proprietor, in fee simple or in freehold, or by virtue of any act or acts of the legislature, of lands or tenements lying in such county or riding, of the clear yearly value of 44s. 5½d., (equal, at the time of passing the imperial act 31 G. III., c. 31, to 40s. sterling,) or upwards, over and above all annual rents, or any other rents and charges payable out of the same, nor unless in actual uninterrupted possession, or receipt of rents and profits, at least six calendar months before the date of the writ of election, unless the same shall have come by descent or inheritance, devise or marriage, or unless the deed or patent under which he claims shall have been registered three calendar months before the date of the

writ; provided that no person shall vote by virtue of any conveyance made to his wife after marriage, unless such conveyance shall have been registered *three* calendar months as aforesaid, or such person shall have been in possession for *six* calendar months before the date of the writ. § 31. And for cities and towns, the qualification shall be real estate of the yearly value of £5 11s. 1½d., (equal to £5 sterling,) or upwards, over and above all other rents and charges, and uninterrupted possession of such real estate, or receipt of rents and profits six calendar months before the date of the writ, unless the same shall have come by descent, &c., or unless the deed of conveyance or patent so registered shall have been registered *three* calendar months before the date of the writ; with similar proviso as above in respect to qualification by virtue of any conveyance to the wife after marriage. § 32. Persons qualified to vote, notwithstanding any subsisting covenant, contract, or agreement between landlord and tenant for the removal of buildings, or allowance of money therefor.

*Tenant Voters.*—§ 33. Tenants not entitled to vote for any city or town, unless residing at the time within the limits of such city, or town, or liberties, and having so resided during the period of *twelve* calendar months next before the date of the writ, by actual residence in a dwelling house or part of a dwelling house lying within the limits of such city, or town, or liberties, nor unless he shall have paid *bona fide* one year's rent for the same, at the rate of £11 2s. 2½d. (equal to £10 sterling) or upwards a-year; such year's rent to be up to the last yearly, half yearly, quarterly, or other day of payment next before the date of the writ; but if the annual rent shall exceed £11 2s. 2½d., then payment of that sum shall be deemed sufficient. Persons only holding a shop, counting-house, office, or other place of business, and who shall not have an actual residence, shall not be entitled to vote: change of residence in any such city not to disqualify, provided the tenant be in other respects qualified, and in such case he shall vote in the ward where residing. § 34. Tenants otherwise qualified may vote whether the dwelling house be erected by himself or others, and whether or no there be any subsisting covenant, contract, or agreement between the landlord and tenant for removal of the building, or allowance of money in lieu thereof at the end of the term.

*Government and Corporate Officers.*—§ 35. Persons occupying houses in such capacity shall not be entitled by reason thereof to vote, unless such party shall have contracted to pay and have *bona fide* paid one year's rent for the same.

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**Lands in several counties.**—§ 36. The proprietor may vote for the part lying within the county where the election is had, if in other respects qualified; and if within the limits of two polling places he may vote at either at his discretion.

**Lands partly in Cities and Towns.**—§ 37. Party not entitled to vote unless the dwelling-house shall be wholly within the limits.

§ 38 relates to Lower Canada.

**Joint tenants.**—§ 39. Each may vote upon his undivided share, provided such part or share be of the yearly value of at least £2 4s. 5½d. as required by § 30, if such lands be situated in any county or riding, or of the yearly value of £5 11s. 1½d., as required by § 31, if situate in any city or town, over all rents and charges.

**Incorporated Companies.**—Shareholders in, not entitled to vote.

**Disputed votes.**—§ 40. The words "objected to" to be written after the name in the poll book, and the name of the objecting candidate. The situation of the property voted upon may be demanded by the deputy returning officer, or a candidate or his agent, and such voter shall give the particulars thereof before voting, verbally; and the deputy shall, if required by any candidate or agent, note the same in the poll book.

**Electors' Oath.**—§ 41. Voters may be required by one of the candidates or his agent, *and not otherwise*, before voting, to take one of the oaths or affirmations as under, viz.—If the election be for a county or riding, oath No. 10, 11, 12 or 13; if for a city or town, No. 14, 15, 17 or 18 if voting as a proprietor; and No. 16 if voting as a tenant: and any such voter may be required to take the oath No. 19. Oath to be taken before the deputy returning officer, who on neglect or refusal, or administering any such oath without being required, shall incur a penalty of £10; and any elector voting without taking such oath (when required), shall incur a penalty of £10. If the voter shall refuse the oath, his refusal shall be noted in the poll book, and his vote shall not be taken—and if taken shall be void, and the officer shall incur a penalty of £10.

**British Subjects.**—§ 42. Such only by birth or naturalization and of the full age of 21 entitled to vote; and in case of dispute the party shall be allowed to prove himself a British subject, by producing a lawful certificate of naturalization, or, at his option, taking the oath No. 19 before the deputy returning officer.

**Oath of Allegiance.**—§ 43. Deputy returning officers authorized to administer the oath.

**Unqualified Voters.**—§ 44. Any person voting, and knowing

himself to be unqualified, shall incur a penalty of £10, and his vote shall be void; and any person voting more than once at the same election, shall incur a like penalty of £10, and such subsequent vote shall be void.

**Fraudulent Conveyance.**—§ 45. Conveyance being made of any lands for the purpose of giving a vote, such vote shall be void, and the voter liable to £25 penalty; and such conveyance shall nevertheless be valid, and transfer the property out of the party executing the same, and vest the same in the other party; and every agreement to annul or revoke or re-convey, shall be null and void.

**Females.**—§ 46. Not permitted to vote at county or city elections.

**Interpreters.**—§ 47. For appointment of.

**Qualification of Candidate.**—§ 48. Every candidate before making the declaration required by § 28 of the Union Act, shall when personally required to make the said declaration, before he shall be elected, give and insert at the foot of the declaration, a correct description of the lands or tenements on which he claims to be qualified, and of their local situation, by adding after the word "Canada," the following words: "and I further declare that the lands or tenements aforesaid consist of, &c.," and every person giving a false description shall be guilty of misdemeanor, and incur the pains and penalties of perjury. § 49. Any candidate, as well before as after the date of the writ of election, may voluntarily make such declaration, as in preceding section. But no such declaration need be made, unless required on or before the day of nomination, and before poll granted; and when any such declaration shall be required, the candidate may make the same at any time during the election: provided it be made before the proclamation at the close of the election; and such declaration, voluntary or otherwise, may be made before the returning officer, or a justice of the peace, or the mayor, or one of the aldermen of the city or town who shall take and attest the same, thus: "taken and acknowledged before me," or words to the like effect, and by dating and signing such attestation and such declaration, delivered to the returning officer at any time before the close of the election shall be a compliance with the law, and such returning officer shall, under a penalty of £50, give forthwith to the candidate an acknowledgment under his hand of the delivery of such declaration.

**Conservators of the Peace.**—§ 50. Returning officers and their deputies, after subscribing the oath of office, until the day next after the final closing of the election, shall be conservators of the peace, and invested with the powers of justices

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the peace, for the maintenance of the peace, arrest, detention or admission to bail, trial and conviction of any person or persons who shall break the law or trouble the peace; and for the maintenance of peace and good order at such elections they may require the assistance of all justices, constables and other persons present, whether at the hustings or polling places, and to swear in special constables; and such returning officer or deputy may arrest or cause to be arrested by *verbal* order, and place in the custody of one or more constables or other persons, for such time as he shall deem expedient, any person disturbing the peace and good order; or cause such person to be imprisoned under an order signed by him, until any period not later than the close of the poll; which verbal order all persons shall be bound to obey without delay, under a penalty of £5. § 51. Special constables may be sworn in by the returning officer or deputy, on requisition by any candidate, his agent, or any two or more electors. § 53. The returning officer or deputy may demand the surrender of arms and offensive weapons during the election: any person refusing, to be guilty of misdemeanor and punishable by fine not exceeding 5*l.*, or imprisonment not exceeding three calendar months, in the discretion of the court. § 53. Assault and battery during the election to be deemed an aggravated assault.

**Bribery, &c.**—Any candidate, directly or indirectly, employing any means of corruption, or threat, with intent to corrupt or bribe, or keep back any elector, or keeping open houses of entertainment, his election shall be declared void by the proper tribunal, and he shall be incapable of being elected or returned during that parliament. § 55. Parties giving or receiving any gratuity or reward for voting or forbearing to vote at any election, shall forfeit and pay not less than 5*l.*, nor more than 50*l.* § 56. And the name of such voter shall be struck off the poll-book by the proper tribunal. § 57. Entertainment not to be furnished by any candidate to any meeting of electors assembled to promote his election previous to, or during the election, except entertainment at his usual place of residence.

**Strangers.**—§ 58. Prohibits persons not having a stated residence in the township for at least six months before the election (except the returning officer, his deputy, clerk, or constables) from coming into such township during the poll, armed with offensive weapons of any kind, or any person living in the township to arm himself and approach within two miles of the poll.

**Flags, &c.**—§ 59. Ensigns, standards, colours or flags, not to be supplied by any candidate or other person, or used on the day of election, or within eight days before, or during such

election, as a party flag. § 60. Nor any ribbon, label, or favour.

§ 61. Any person offending against any of the four last clauses, shall be guilty of a misdemeanour, punishable by fine not exceeding £25, or imprisonment not exceeding six calendar months.

§ 62. Any person stealing or unlawfully taking, destroying, injuring or obliterating, or aiding therein, any writ of election or return, indenture, poll-book, certificate or affidavit, or other document or paper under this act, shall be guilty of felony, and liable to imprisonment in the penitentiary from three to seven years, or imprisonment elsewhere, not exceeding two years, or fine or imprisonment, or both, as the court shall award. § 63. Oaths under this act shall be lawfully administered by the parties required to administer the same. § 64. Penalties under this act recoverable with costs in any of the courts of competent jurisdiction; and in default of payment the offender shall be imprisoned in the common gaol until payment: suits to be commenced within *nine* calendar months.

*Cities and Towns*—§ 65—having the right to elect members, not to form any part of the county or riding, as regards elections; and no person shall vote in any county or riding upon real estate in any city or town.

*Fees*—§ 66—in the annexed schedule to be allowed to the several officers, viz.:

#### TO THE RETURNING OFFICER,

	£	s.	d.
For attendance on the day of opening election .....	2	0	0
For attendance on closing the election .....	2	0	0
For an election clerk for each of those two days, when required, .....	1	0	0
For two constables on each of those two days .....	0	5	0
For each copy of proclamation required by law to be posted .....	0	2	6
For each commission for deputy and election clerk .....	0	2	6
For each warrant to deputy to take the poll .....	0	2	6
For each indenture .....	0	5	0
For each mile actually and necessarily travelled for attending elections, posting proclamations, and transmitting commissions and poll books ..	0	0	6
For each poll book furnished to deputy .....	0	5	0
For each copy, per folio of one hundred words .....	0	0	3
And reasonable expenses incurred in providing hustings, and reasonable expenses in transmitting poll books and returns to the clerk of the crown in chancery.			

#### TO EACH DEPUTY,

For each day of holding the poll .....	1	0	0
For the commission appointing a poll clerk .....	0	2	6
For a poll clerk each day .....	0	10	0
And for mileage actually and necessarily travelled to and from the poll, per mile .....	0	0	6
For two constables, each per diem .....	0	5	0
For mileage actually and necessarily travelled for transmitting poll books to returning officer, per mile .....	0	0	6
And reasonable expenses incurred in providing hustings or polling places.			

#### TO JUSTICES OF THE PEACE,

When required to administer oath in a public manner, mileage at the rate of, per mile .....	0	0	6
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Such fees and allowances to be paid to the returning officer, by warrant on the receiver general, and distributed to the several parties.

§ 67. One copy of this act, with index, and one for each of his deputies, to be transmitted with the writ of election to the returning officer.

§ 68. Contains a provision for extending the time of polling in the townships of Waterloo and Wilmot. § 69. Act may be annulled or repealed this session.

(For Schedules and Forms, see the act.)

## EMBEZZLEMENT.

By stat. 4 & 5 V., c. 25, § 39, if any clerk or servant, or any person employed for the purpose or in the capacity of a clerk or servant, shall by virtue of such employment receive or take into his possession any chattel, money, or valuable security for or in the name or on the account of his master, and shall fraudulently embezzle the same or any part thereof, every such offender shall be deemed to have feloniously stolen the same from his master, although such chattel, money or security was not received into the possession of such master otherwise than by the actual possession of his clerk, servant, or other person so employed; and every offender, upon conviction, shall be liable at the discretion of the court, to any of the punishments which the court may award, as in said act mentioned. § 40.

Any number of distinct acts of embezzlement not exceeding three, committed within six calendar months, may be charged in the indictment; and except in the case of chattels, it shall be sufficient to allege the embezzlement to be of money, without specifying any particular coin or valuable security. § 41.

If any money or security for the payment of money shall be intrusted to any banker, merchant, broker, attorney or other agent, with any direction in writing to apply the same, or the proceeds of such security, for any purpose specified in such direction, and he shall in violation of good faith, contrary to the purpose so specified, in anywise convert the same or any part thereof to his own use or benefit, every such offender shall be guilty of a misdemeanor, and being convicted thereof shall be liable at the discretion of the court to be imprisoned at hard labour in the provincial penitentiary for any term not less than seven years, or imprisoned in any other prison or place of confinement for any term not exceeding two years, or to suffer such other punishment by fine or imprisonment, or by both, as the court shall award. And if any chattel or valuable security, or any power of attorney for the sale or transfer of any share or interest in any public stock or fund, whether of this Pro-

vince, or of the United Kingdom of Great Britain and Ireland, or of Great Britain, or of Ireland, or of any British colony or foreign state or colony, or in any fund of any body corporate, company, or society, shall be intrusted to any banker, merchant, broker, attorney or other agent, for safe custody or for any special purpose, without any authority to sell, negotiate, transfer, or pledge, and he shall in violation of good faith, and contrary to the object or purpose for which the same shall have been intrusted to him, sell, negotiate, transfer, pledge, or in any manner convert the same or the proceeds thereof to his own use, every such offender shall be guilty of a misdemeanor, and upon conviction shall be liable at the discretion of the court to any of the punishments which the court may award, as thereinbefore mentioned. § 42. This act not to affect any trustee in or under any instrument whatever, or any mortgagee of real or personal property; nor restrain any banker, merchant, broker, or attorney or other agent, from receiving any money due and payable by virtue of any valuable security, according to the tenor and effect thereof; nor from selling, transferring, or otherwise disposing of any securities or effects in his possession, upon which he shall have any lien or claim, entitling him to do so: unless such sale or transfer shall extend to more than what shall be requisite for satisfying such lien, claim or demand. § 43. If any factor or agent intrusted with any goods or merchandise for sale, or with any bill of lading, warehouse keeper's or wharfinger's certificate, or warrant or order for delivery of goods or merchandise, shall for his own benefit and in violation of good faith, deposit or pledge the same or any of them as a security for any money or negotiable instrument, borrowed or received by such factor or agent, at or before the time of making such deposit or pledge, or intended to be thereafter borrowed or received, every such offender shall be guilty of a misdemeanor, and being convicted thereof shall be liable at the discretion of the court to be imprisoned at hard labour in the provincial penitentiary for any term not less than seven years, or imprisoned in any other prison or place of confinement for any term not exceeding two years, or to suffer such other punishment by fine or imprisonment, or by both, as the court shall award; but no such factor or agent shall be liable to any prosecution for depositing or pledging any such goods or merchandise or any of the said documents, in case the same shall not be made a security for or subject to the payment of a greater sum than the amount justly due and owing to such factor or agent from his principal, together with the amount of any bill of exchange drawn by or on account of such principal, and accepted by such factor or agent. § 44.

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This act not to deprive the party aggrieved of any remedy at law or in equity; nor shall the conviction of any offender be evidence against him; nor shall any accused party be convicted upon any evidence disclosed by him in any court of law or equity, or before commissioners of bankruptcy.

### EMBRACERY,

Is an attempt to influence a jury corruptedly to one side by promises, persuasions, entreaties, money, entertainments and the like. The punishment for the person embracing is by fine and imprisonment; and for the juror so embraced, if it be by taking money, the punishment is (by divers statutes of the reign of Edw. III.) perpetual infamy, imprisonment for a year, and forfeiture of the tenfold value.—*Bl. Com. p. 140, 15 Ed.*

### EMIGRANTS.

By 4 & 5 V., c. 14, the household goods and necessities of all kinds, of any person or persons coming into this province, or any part thereof, for the purpose of actually settling, are exempt from provincial duties enforced by said act; but such exemption not to extend to any goods, wares or merchandize brought or imported by such person or persons for trade or call.

By 12 V. c. 6, the 4 & 5 V. c. 13, and 11 V. c. 1, are repealed; and by § 2, a duty shall be payable by the master in command of vessels arriving at Quebec or Montreal from any part of Europe with emigrants or passengers of 7s. 6d. for every adult passenger or emigrant, and 5s. for every other between the ages of five and fifteen embarking with the sanction of the government, and 10s. for those embarking without such sanction: children under five years of age exempt. § 3. Additional duty of 40s. payable for every person embarking and not included in the collector's passenger list. § 4. Passengers not to leave the ship until the fees are paid; under a penalty on the master of not less than £5 nor more than £25. § 5. The master required on arrival to report to the collector the name and age of all passengers on board who shall be lunatic, idiotic, deaf and dumb, blind or infirm, and whether accompanied by relatives likely to support them, under the like penalty for every such passenger. § 5. Provides for passengers leaving at their own request, on certain conditions. § 7. The report also to contain the names, &c. of persons dying on the passage. § 8. Passengers entitled to remain on board forty-eight hours after arrival in harbour. § 9. Pilots liable to a penalty for not reporting to the collector any passenger leaving before the arrival of the vessel in harbour. § 10. Medical superintendent to go on board imme-

diately on the arrival of the vessel, and report if any lunatic or other infirm persons be on board not belonging to an emigrant family, and liable to become a permanent charge. The master shall then give a bond of indemnity, with two sureties in £75 for every such infirm person; § 11, to be applied in their support, if chargeable at any time within three years. § 12. Penalty of £100 on the master refusing to give such bond. § 13. Emigrant agents to report to the government the claim of any such person for support. § 14. Medical superintendent and other officers not to have any interest in any contract respecting the quarantine establishment, under a penalty of £100, or imprisonment not exceeding six months. § 15. Masters of vessels required to land their passengers free of expense, at the usual landing places at the port of Quebec, at reasonable hours—not earlier than six in the morning, nor later than four in the afternoon.

### ESCAPE.

Where a person hath another in lawful custody, upon an arrest whether made by himself or another, if he suffer him to go at large, before he is delivered by lawful authority, it is an escape, for which he is punishable; but the arrest must be for a real and not a supposed crime.—2 *Haw.*, c. 19, § 2. And the imprisonment must be for a criminal offence.—*Id.*, § 3. And a gaoler is guilty of the offence, if he give a prisoner more liberty than the law allows; or, if he suffer the prisoner to go out for a time, though he afterwards return.—*Id.* § 5, and *Dalt* c. 159. Where a person is found guilty on an indictment of a negligent escape, he is punishable by fine and imprisonment, according to the quality of the offence.—2 *Haw.*, c. 19; 1 *Hale*, 600, 604. And if a voluntary escape, he is punishable in the same degree as the offence of which the party is guilty; but no one shall be deemed guilty but the actual offender.—2 *Haw.*, c. 19, § 23.

By statute 16 G. II., c. 31, to assist a prisoner convicted of treason or felony to attempt an escape, is felony, and subjects the offender to transportation for seven years; and if the party be committed for petit larceny, or on a civil process for debt, amounting to £100, he shall be guilty of a misdemeanor, and liable to fine and imprisonment; and for conveying any disguise, or instrument, or arms, to facilitate the escape of prisoners convicted of or committed for treason or felony, the offender shall be transported for seven years; or if for petit larceny, or civil process for a debt, &c., amounting to £100, he shall be deemed guilty of a misdemeanor, and be liable to fine and imprisonment. § 2 and 3. And assisting a felon to escape

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from a constable, is by this statute also made felony, and subjects the offender to transportation for seven years.—*Ib.*

This statute does not extend to cases where an *actual escape* is made, but only to cases where an *attempt* is made, without effecting the escape.—*R. v. Tilly and others, O. B. Sess. 1795.*

*Warrant to apprehend a person for Escaping from the House of Correction.*

County of ——— } To the constable of ——— in the county of ———  
to wit.

Forasmuch as A. B. keeper of the house of correction at ——— in ——— hath this day made information and complaint, upon oath, before me, J. C. Esquire, one of her Majesty's justices of the peace, acting in and for the county of ———, that C. D. hath unlawfully and wilfully escaped from the house of correction at ——— aforesaid, and from and out of the custody of him the said A. B. the keeper thereof, before the expiration of a certain term for which he the said C. D. was ordered to be imprisoned and kept to hard labour therein: These are therefore to command you, the said constable, forthwith to apprehend and bring before me, or some other of her Majesty's justices of the peace for the said county, the body of the said C. D. to answer unto the said complaint, and to be further dealt with according to law.

Given under my hand and seal, &c.

### ESTREAT.

An estreat (from *extractum*) is a true copy or extract of some original writing or record, containing an entry of fines or amerciaments imposed by a court of record, or other competent authority; but when applied to a recognizance itself, is *extracted* or taken out from among the other records, and sent up to the exchequer.—*4 Bl. Com. 253.*

\*By the 7 Wm. IV. c. 10, § 3, all fines, issues, amerciaments, and forfeited recognizances, (except such as shall by any act be directed to be otherwise levied), which shall be set, imposed, lost, or forfeited, by or before any general quarter sessions of the peace, shall within 21 days after the adjournment of the court be entered on a roll by the clerk of the peace, which roll shall be made out in duplicate and signed by the clerk of the peace. § 4. One of the said rolls to remain deposited in the office of clerk of the peace, and the other shall, so soon as prepared, be sent by the clerk of the peace, with a writ of *hæc facias* and *capias* according to the form in the schedule marked B, to the sheriff of the district, which writ shall be authority to such sheriff for levying the same, or for taking into custody the bodies of such persons, in case sufficient goods cannot be found; and every person so taken shall be lodged in the common gaol of the district until satisfaction be made, or until the general quarter sessions shall, upon cause

shewn by the party as hereinafter mentioned, make an order in the case, and such order be fully complied with. § 5. In every case of default whereby a recognizance may be forfeited, if the cause of absence be made known to the court, the court may on consideration of such cause, and also considering whether by the non-appearance of such person the ends of justice have been defeated or delayed, forbear to order the recognizance to be estreated: and with respect to all recognizances estreated in court, and fines imposed for the non-attendance of any juror or constable, or of any public officer bound to attend at such court, it shall be in the power of the chairman of the sessions, and any two justices who presided at such court, to make an order directing that the sum forfeited upon such recognizance or fine imposed be not levied, provided it shall appear satisfactorily that the absence of such party was justifiable; and for such purpose it shall be necessary for the clerk of the peace, before sending to the sheriff any roll with a writ as directed by this act, to submit the same to the chairman for his revision, who, taking to his assistance two of the presiding justices, shall make a minute on the roll of such recognizances and fines as they may think fit to direct not to be levied, and the sheriff shall forbear to levy the same. § 6. The sheriff upon taking lands or tenements in execution, shall advertise the same in like manner as lands in execution in other cases, and no sale shall take place in less than twelve calendar months from the time the writ shall come into the sheriff's hands. § 7. The clerk of the peace shall at the foot of each roll make and take the following affidavit:—"I, A. B. (describing his office) make oath that this roll is truly and carefully made up and examined, and that all fines, issues, amerciaments, recognizances and forfeitures, which were set, lost, imposed or forfeited, at or by the court therein mentioned, and which in right and due course of law ought to be levied and paid, are to the best of my knowledge and understanding, inserted in the said roll, and that in the said roll are contained and expressed all such fines as have been paid to or raised by me, either in court or otherwise, without any wilful discharge, omission, misnomer, or defect whatsoever: So help me God!" which oath any justice of the peace for such district may administer. § 8. The justice before whom any recognizance shall be entered into, shall give at the time of entering into such recognizance to the person or persons entering into the same, and to each of his sureties, a written or printed paper or notice, in the form in the schedule marked C, and every such justice shall in such recognizance state and specify particularly the profession, art, or trade of every person so entering into

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such recognizance, together with the christian name and surname, and also the place of his or her residence. § 9. Persons on whom levies made for forfeited recognizances, may give security to the sheriff or other officer for their appearance in court at the return day of the writ, to abide the decision of the court, and to pay such forfeited recognizance or money to be paid in lieu or satisfaction thereof, together with such lawful expenses as shall be ordered by the court, and thereupon the sheriff may discharge such person out of custody: Provided that in case such party shall not appear, it shall be lawful for the court forthwith to issue a writ of *feri facias* and *capias* against the sureties. § 10. The court of general quarter sessions into which any writ of *feri facias* or *capias* shall be returnable, may inquire into the circumstances of the case, and in its discretion order the discharge of the recognizance, or money paid or to be paid in lieu thereof, and make such order thereon as to them may appear just. § 11. The sheriff shall return the writ on the day the same is returnable, and state on the back of the roll attached to such writ what shall have been done in the execution thereof, which return shall be filed in the court, and a copy thereof certified by the clerk of the peace shall be forthwith transmitted to the receiver-general, with a minute thereon of any sums remitted by order of the court, in the whole, or in part, or directed to be forborne. § 12. The sheriff shall without delay pay over all monies by him collected to the receiver-general.

SCHEDULE A.

*William the Fourth, by the Grace of God, &c.*

To the Sheriff of ——. Greeting:

You are hereby commanded to levy of the goods and chattels, lands and tenements, of all and singular the persons in the roll or extract to this writ annexed mentioned all and singular the debts and sums of money upon them severally imposed and charged, as therein is specified, and if any of the said several debts cannot be levied, by reason of no goods or chattels, lands or tenements, being to be found, belonging to the said parties respectively, then and in all cases that you take the bodies respectively, and keep them safely in the gaol of your district, tinct, there to abide the judgment of our Court of King's Bench, upon any matter to be shown by them, or otherwise to remain in your custody, as aforesaid, until such debt shall be satisfied, unless any such person shall give sufficient security for his or her appearance at the said court, on the return day hereof, for which you will be held answerable; and what you shall do in the premises make appear before us, in our Court of King's Bench, at Toronto, on the — day of — term next, and have you then and there this writ. Witness, &c. A. B., Clerk of assize, at the last assizes, for the district of —, this — day of —, 18—.

## SCHEDULE B.

*William the Fourth by the Grace of God, &c.*

To the Sheriff of ——. Greeting:

You are hereby commanded to levy of the goods and chattels, lands and tenements, of all and singular, the persons in the roll or extract to this writ annexed mentioned, all and singular the debts and sums of money upon them respectively imposed and charged, as therein is specified, and if any of the said several debts cannot be levied, by reason of no goods or chattels, lands or tenements, being to be found, belonging to the parties respectively, then and in all cases, that you take the bodies of the parties respectively, and keep them safely in the gaol of your district, there to abide the judgment of the Court of General Quarter Sessions for the said district, upon any matter to be shewn by them, or otherwise to remain in your custody, as aforesaid, until such debt shall be satisfied, unless any such person shall give sufficient security for his or her appearance at the said court, on the return day hereof, for which you will be held answerable; and what you shall do in the premises, make appear at the next Court of General Quarter Sessions of the Peace, for the said district, on the first day of the said court, and have then there this writ. Witness, C. D., clerk of the peace for the district of ——, this —— day of ——, 18—.

## SCHEDULE C.

— District, } Take notice, that you —, are bound in the sum to wit. } of — pounds, and your sureties — in the sum of — pounds each, to appear at —, to be holden at —, and unless you personally make your appearance accordingly, the recognizance entered into by yourself and your sureties will be forthwith levied on you and your bail. Dated this — day of — 18—. A. B. justice of the peace for the — district.

By 4 & 5 Vic. c. 24, § 49, reciting that the indiscriminate estreat of recognizances had been in many instances productive of hardship, it is enacted and the officer of the court is required to prepare a list in writing of forfeited recognizances, specifying the names of the defaulters, the nature of the offences, with the residence, trade, profession or calling of the parties, distinguishing the principals from the sureties, stating the cause if known why the parties have not appeared, and whether the ends of justice have been defeated thereby, and such officer before estreating such recognizances, shall lay such list, if at a court of oyer and terminer or gaol delivery, before one of the justices thereof, or if at a session of the peace before two justices, who shall have attended such court, and who are required to examine such list, and to make such order touching the estreating of any such recognizance as shall appear to them just; and the officer of the court shall not estreat any such recognizance without the written order of the said justice or justices.

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## EVIDENCE.

Evidence, in its general sense, is the testimony of witnesses, given upon an issue joined between parties in a civil or criminal suit.—1 *Inst.* 283. In general, a person is a competent witness unless interested in the event of the suit, either directly or indirectly—7 *T. R.* 62; and by the common law, informers who participate in any penalty are not competent witnesses; but they are sometimes rendered so by act of parliament in particular cases.—1 *Ph. Ev.* 117. The confession of a defendant taken on an examination before justices, is allowed to be evidence against the party confessing, but not against third persons.—2 *Haw. c.* 46, § 3. The distinction between a *credible* and a *competent* witness is, that the former is not disabled from being produced and sworn, but the *credit* of his testimony depends upon his moral character; the latter may be disabled by interest, and other causes, from giving evidence, and on that account is *incompetent*.—2 *H. H.* 276, 277.

If a person be convicted of treason, felony, forgery, perjury, subornation of perjury, attain of false verdict, and other offences of the same description, which involve the charge of falsehood, and affect the administration of justice, he is incompetent to give evidence. So, if convicted of bribing a witness to absent himself and not give evidence; barratry or conspiracy to accuse another of a capital offence.—*Russell on Cr.* 592, 593. The incompetency must be proved by the production of the record of conviction and judgment.—*Gilb.* 128, 129. The admission of the witness himself that he had been convicted of grand larceny, and was then under sentence, was held insufficient.—8 *East.* 78. And an admission by a witness that he has been guilty of perjury, affords no objection to his competency, whatever effect it may have upon his credit.—*R. v. Teal.* 11 *East.* 389. And by stat. 9 Anne, c. 14, 15, a person convicted of winning by fraud or ill practice in certain games is rendered incompetent. The incompetency arising from infamy may be removed—1st, by endurance of punishment; 2nd, by pardon; 3rd, by reversal of the punishment. By statute 31 G. III. c. 35, no person shall be incompetent by reason of a conviction for petit larceny.

By 4 & 5 V. c. 24, § 22, offenders convicted of misdemeanors affecting their competency as witnesses, and having endured the punishment adjudged for the same, shall not afterwards be deemed incompetent witnesses (convictions for perjury or subornation of perjury excepted).

A witness cannot be asked any question, the answer to which would criminate himself; but he may be asked whether he has not been in the pillory for perjury.—4 *T. R.* 440. An infant fourteen years of age, and even under, if of competent discretion, may be sworn to give evidence.—2 *H. H.* 278. The deposition of a witness taken *extra judicially* before a magistrate is not evidence.—*Leach*, 397. Husband and wife are not admitted as evidence either for or against each other, except in treason; but in polygamy (for the second marriage being void) the second wife may be admitted as a witness. A wife may also be permitted to swear the peace against her husband, and *vice versa*.—*Buller*, *N. P.* 286. A woman living with a man as his wife, though not actually so, cannot be examined as a witness on his behalf.—*Campbell v. Twemlow*, 1 *Price*, 81; 1 *Phil. Ev.* 82. Quakers, Menonists and Tunkers, &c., are admissible as witnesses upon their simple affirmation.—\*10 *G. IV. c.* 1.

#### EXAMINATION.

By statute 4 & 5 *V. c.* 24, § 2, justices of the peace, before they shall admit any person to bail in cases of felony, shall take the examination of such person in writing.

See further on this subject, *ante* title "Bail."

See also *post* title "Justice of the peace."

#### EXECUTION.

Execution is the last stage of criminal proceedings. This must, in all cases, be performed by the sheriff, or his deputy, whose warrant for so doing was anciently by precept, under the hand and seal of the judge. For a long time past, however, it has been the established practice for the judge to command execution to be done without any writ. The usage is for the judge to sign the calendar or list of all the prisoners, with their separate judgments in the margin, which is left with the sheriff. Thus, for a capital felony, it is written opposite to the prisoner's name—"Let him be hanged by the neck;"—formerly, in the days of latin and abbreviation—*super coll. for suspendatur per collum*. This is the only warrant which the sheriff has for so material an act as taking away the life of another.—4 *Bl. Com.* 402. The place, however, ought to be somewhere in the county where the criminal was tried and convicted—unless the record of assize be removed into the King's Bench: which court may award execution in the county where it sits.—3 *Inst.* 31, 211, 217; 4 *Bl. Com.* 404. If upon judgment to be hanged by the neck till dead, the criminal be not thoroughly killed, but revives,

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the Sheriff must hang him again, for the former hanging was, no execution of the sentence; and if a false tenderness were, to be indulged in such cases, a multitude of collusions might ensue.—2 *Hale*, 412; 2 *Haw.* 463; 4 *Bl. Com.* 406. The body of a traitor or felon is, in strictness of law, forfeited to the king, by the execution, and he may dispose of it as he pleases; but it is usual in all cases, except *murder*, to give up the body for interment. Execution may be avoided by a *reprieve*, or a *pardon*; the former is only temporary, but the latter is permanent. Every judge who hath power to order execution, hath also power to grant a reprieve.—2 *Hale*, 412. When a woman *quick* with child is condemned, although this is no cause to stay the judgment, yet it is good cause to respite the execution until she be delivered. Upon this plea being made, the judge must direct a jury of twelve matrons, or discreet women, to inquire the fact; and if they bring in their verdict *quick with child*—for barely *with child*, unless it be alive in the womb, is not sufficient—execution shall be stayed generally till the next assizes, until she is either delivered, or proves, by the course of nature, not to have been with child at all.—4 *Bl. Com.* 395. If a prisoner become *non compos mentis* between the judgment and award of execution, the judge ought in this case also to reprieve him, for *furiosus solo furiore punitur*; and the law knows not but he might have offered some reason, if in his senses, to have stayed the execution.—*Ibid.* Execution may be also avoided by a plea of diversity of persons, viz., that he is not the same that was attainted, and the like. In this case, a jury shall be empannelled to try the facts. In all such collateral issues, the trial must be *instantier*, and no time allowed the prisoner to make his defence, or produce his witnesses, unless he will make oath he is not the person attainted.—*Foat.* 42.

\* By statute 3 Wm. IV. c. 4, § 19, instead of the former punishment for *treason*, viz., disembowelling the traitor, and dividing his body into four quarters, it is enacted that the sentence to be pronounced shall be, "that such person be drawn upon a hurdle to the place of execution, and be there hanged by the neck till such person be dead, and that afterwards the body of such person shall be dissected and anatomized;" and when any person shall be convicted of *murder*, his body shall be delivered by the sheriff to a surgeon for dissection. § 20. After sentence pronounced as aforesaid, the judge may, if he see probable cause, order a respite.

By 4 & 5 Vic. c. 27, § 4, sentence of death may be pronounced, after conviction for murder, in the same manner, and the court before which the conviction may be had shall have

the same power, in all respects, as after conviction for other capital offences. § 5. Every person convicted of murder shall after judgment be confined in some safe place within the prison, apart from all other prisoners, and shall be fed with bread and water only, and with no other food or liquor except in case of receiving the sacrament, or in case of any sickness or wound, in which case the surgeon of the prison may order other necessaries to be administered: and no person but the gaoler and his servants, and the chaplain and surgeon of the prison, shall have access to any such convict without the permission in writing of the court or judge before whom such convict shall have been tried, or of the sheriff or his deputy.

## EXTORTION.

Extortion is an abuse of public justice, consisting in the unlawful taking by an officer, by *colour of his office*, of any money or thing of value, where either none at all is due to him, or not so much is due, or before any is due.—*Co. Lit.* 363; 10 *Rep.* 102. This offence, it has been justly observed, may be, in some cases, considered more odious than robbery; because it carries with it an appearance of truth, and is often accompanied with perjury, by the breach of an oath of office. The punishment for this offence, at common law, is by fine and imprisonment, and also by a removal from the office, in the execution of which it was committed. And there is a further additional punishment by the statute of Westminster 1, (3 Ed. 1, c. 26), by which any sheriff, or other king's officer, who shall take any reward to do his office, shall yield twice as much, and shall be punished at the king's pleasure; under which statute an action lies also to recover this double value.—3 *Com. Dig.* 323. But justices of the peace, whose office was instituted after the act, are bound by their oath of office to take nothing for the execution of their office but of the king, and fees accustomed, and costs limited by statute. And generally no public officer can take any other fees or rewards than those given him by the statute, or such as have been anciently and accustomedly taken, without being guilty of extortion.—*Dall. c.* 41.

It is extortion in a gaoler to obtain money from his prisoner, by colour of his office.—*R. v. Broughton, Trem. P. C.* 111; in a coroner to refuse taking an inquest till his fees are paid.—3 *Inst.* 149; or in an under sheriff to obtain his fees by refusing to execute process till they are paid, or to take a bond for his fee, before execution is sued out.—1 *Salk.* 330. It is also extortion in a miller or ferryman to take more toll than is due

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by custom.—*R. v. Burdett*, 1 *Ld. Ray*, 149. It is also an indictable offence to persuade another to extort money from a person, whereby money was actually extorted from him.—*R. v. Tracy*, 3 *Salk.* 192.

## EXPLOSIVE SUBSTANCE.

By 10 & 11 V., c. 4, § 1, any person unlawfully and maliciously, by the explosion of gunpowder or other explosive substance, destroying or damaging any dwelling house, any person being therein; § 2, or destroying or damaging any building with intent to murder any person, or whereby the life of any person shall be endangered; § 3, or shall by any explosive substance burn, maim, disfigure, disable or do any grievous bodily harm to any person; § 4, or shall unlawfully and maliciously cause any gunpowder or other explosive substance to explode; or send, or deliver to, or cause to be received by any person any explosive substance, or any other dangerous or noxious thing, or cast or throw at or upon, or otherwise apply to any person any corrosive fluid, or other destructive or explosive substance, with intent to burn, maim, disfigure, disable, or to do some grievous bodily harm, shall, although no bodily injury be effected, be guilty of felony. § 5. Offenders liable, at the discretion of the court to be imprisoned in the provincial penitentiary for not less than seven years; or to be imprisoned in any common gaol not exceeding three years.

§ 6. Maliciously placing or throwing in, into, upon, against or near any building or vessel, any explosive substance with intent to do any bodily damage to any person, or to destroy or damage any building or vessel, or any machinery, working tools, fixtures, goods or chattels, whether any explosion takes place, and whether or not any injury be effected is also made felony, and the offender liable to seven years in the penitentiary, or two years imprisonment in the common gaol, at the discretion of the court.

§ 7. Attempt by any overt act to set fire to any building, vessel, or to any stack, or to any vegetable produce of such kind, and with such intent, that if the offence were complete, the offender would be guilty of felony and liable to be imprisoned seven years in the penitentiary, is also made felony, and the offender liable to seven years imprisonment in the penitentiary, and not less than three years, or imprisoned in any common gaol not exceeding two years.

§ 8. Any person knowingly having in his possession, or making or manufacturing any explosive substance, or other

dangerous or noxious thing, or any machine, engine, instrument or thing, with intent to commit any offence against this act, shall be guilty of a misdemeanor, and liable to be imprisoned in any common gaol not exceeding two years. § 9. Such offenders under *eighteen* years of age, liable to be publicly or privately whipped in addition, at the discretion of the court. § 10. Principals in the second degree, and *accessories before* the fact, punishable as principals in the first degree: accessories *after* the fact liable to imprisonment in any common gaol not exceeding two years. § 11. Offenders may also be sentenced to hard labour, or to solitary confinement not exceeding one month at a time, nor three calendar months in the year, at the discretion of the court. § 12. Any justice of the peace of the neighbourhood, upon reasonable cause, assigned upon oath, may issue a warrant for searching in the day time any house, shop, cellar, yard or other building, or any vessel in which such explosive or noxious substance is suspected to be made or kept for such purpose as aforesaid; and every person acting in the execution of such warrant, shall have power to seize any gunpowder, explosive substance or any dangerous or noxious thing, or any machine, engine or instrument, which he shall have good cause to suspect to be intended to be used in committing any offence under this act, and to remove the same to such proper places as he shall think fit, and detain the same, until ordered to restore it by any judge of the Court of Queen's Bench, and such searchers shall not be liable to any suit for such detainer, or for any loss or damage, other than by the wilful acts or neglects of the parties entrusted with the keeping thereof.

§ 13. Any gunpowder, explosive substance, or dangerous or noxious thing, or any machine, engine or instrument, intended to be used to commit any offence against this act, and seized accordingly, in the event of conviction, shall be forfeited, and sold under the direction of the court, and proceeds paid to the receiver-general.

§ 14. Any constable or peace officer may take into custody, without warrant, any person found lying or loitering in any highway, yard or other place during the night, and suspected of intending to commit any felony under this act, and to detain such person until brought before a justice to be dealt with according to law. § 15. Such person not to be detained after noon of the following day, without being brought before a justice. § 16. Offenders under this act not to be tried before justices in session, or any recorder of any city. § 17. Offences committed within the admiralty jurisdiction to be tried accordingly.

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**FAIRS AND MARKETS.**

The right to hold a fair or market in this province is by charter from the crown, or by act of parliament. The inhabitants of any locality desirous of holding a fair or market for the exhibition and sale of goods, wares and merchandize, may apply by petition to the governor-general for a charter. The following is a suitable form for such petition :

*Form of a petition for a Charter to hold a Fair.*

To His Excellency the Right Honourable JAMES, EARL OF ELGIN AND KINGARDINE, K. T., Governor-General of British North America, and Captain-General and Governor-in-Chief in and over the Provinces of Canada, Nova Scotia, New-Brunswick, and the Island of Prince Edward, and Vice-Admiral of the same, &c. &c. &c.

*The petition of the undersigned inhabitants and freeholders of the county of —.*

**HUMBLY SHEWETH :**

That from the increase in population, and in the cultivation and improvement of lands in this county, your petitioners conceive that the establishment of a public fair for the sale of goods, wares and merchandize, live stock and agricultural produce, would be productive of great advantage to the inhabitants of this county ; and from its central situation, your petitioners humbly submit that the village of —, in the township of —, in the said county, would be the most desirable place for its establishment. Your petitioners therefore most humbly pray, that your Excellency will be pleased, in her Majesty's name, to bestow upon the inhabitants of the said county a charter for holding two fairs in each year, for the sale of such goods, wares and merchandize, live stock and agricultural produce, as aforesaid, at the said village of —, on the first Wednesday in the months of —, and — to continue until the Saturday following, inclusive, under and subject to the payment and observance of such rates, tolls and regulations as her Majesty's justices of the peace, in general quarter sessions assembled, shall from time to time think proper to impose, make and require ; and your petitioners, as in duty bound will ever pray, &c.

**FALSE PRETENCES.—See "Cheats."**

**FALSE RECEIPTS.**

By 12 V. c. 12, if any keeper of any warehouse, or any forwarder, common carrier, agent, clerk, or other person employed in or about any warehouse ; or if any other factor or agent, or any clerk or other person employed in or about the business of such factor or agent, shall knowingly and wilfully give to any person a writing, purporting to be a receipt for, or an acknowledgment of any goods or other property having been received in his warehouse, or in the warehouse in or about

which he shall be employed, or in any other manner received by him or by the person in or about whose business he shall be employed, before the goods or other property named in such receipt shall have been actually delivered to him as aforesaid, with intent to mislead, deceive, injure or defraud any person or persons whomsoever, known or unknown; or if any person shall knowingly and wilfully accept or transmit or use any such false receipt or acknowledgment, the person *giving* and the person *receiving* the same shall be severally guilty of a *misdemeanor*, and upon conviction liable in the discretion of the court to be imprisoned in the penitentiary, and kept at hard labour for any period not exceeding three years nor less than one year. § 2. And if any owner of merchandize, or other person in whose name merchandize shall be shipped or delivered to the keeper of any warehouse, or other factor or agent or carrier, to be shipped or carried, shall, after the advance to him of any money, or the giving to him of any negotiable security by the consignee of such merchandize, for his own benefit, and in violation of good faith, and without the consent of such consignee first obtained, make any disposition of such merchandize different from the agreement in that behalf between such owner or other person aforesaid and such consignee at the time of or before such money being so advanced, or such negotiable security being so given, with the intent to deceive, defraud or injure such consignee, such owner or other person aforesaid, and every other person knowingly and wilfully acting and assisting in making such disposition for the purpose of deceiving, defrauding or injuring such consignee, shall be deemed guilty of a misdemeanor, and, upon conviction, liable to the same punishment as above. Proviso—that no person shall be subject to prosecution who shall, before making such disposition, pay or tender to the consignee the full amount of any advance thereon. § 3. Interpretation clause.

### FEEES.

See *ante* title "Costs."

### FELLING TREES.

\* By statute 2 Vic. c. 16, reciting, whereas much injury has arisen from the felling of trees into the Grand River, Smith's Creek or River Nith, Orb's Creek or River Speed, in the district of Gore; Otter Creek, in the district of London; the River Credit, in the Home District; the River Otonabee, from Sturgeon Lake to Rice Lake, the River Scugog and River Trent, from Rice Lake to the Bay of Quinte, and Crow River,

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in the Newcastle and Midland Districts ; Rivers Gananoque, Rideau, and Petite Nation, in the Johnstown district ; and the Rivers Try, Mississippi, Bonchere, Madawaska, and Goodwood, in the Bathurst district, in this province, by endangering the mill-dams and bridges, and impeding the navigation thereof ; it is therefore, by § 1, enacted, that every person or persons, or their employers, cutting and felling any trees into the said rivers, or upon such parts of the banks thereof as are usually overflowed in the autumn or spring, by means of the rising of the waters of the said rivers, who shall not lop off the branches of such trees, and cut up the trunks thereof into lengths of not more than eighteen feet, before they are or shall be allowed to be floated or cast into the said rivers, or any of them, shall, for every such offence, forfeit and pay the sum of fifty shillings, or such less sum as is hereinafter provided. § 2. Any person who shall cut down or fell any trees as aforesaid, contrary to this act, shall, upon conviction before any two justices of the district, upon the oath of one or more witnesses, pay such fine as to the justices the case may seem to require, not exceeding fifty shillings, to be levied by distress, by execution under the hand and seal of either of said justices ; and in default of such distress or payment of the fine within three days after conviction, said justices may confine the offender in the common gaol of the district for the space of ten days, unless the said fine and costs be sooner paid. § 3. All fines levied under this act shall be paid to the treasurer of the district, and be applied to the improvement of the roads within the same. § 4. This act not to apply to any round or squared timber or trees, masts, staves, deals, boards, or other sawed or manufactured lumber or saw-logs, prepared for transportation to a market.

**FELONY.**

Felony, in its general sense, comprises every species of crime which occasioned, at common law, the forfeiture of lands, or goods.—4 *Bl. Com.* p. 94 ; and by the common law is against the life of a man—as murder, manslaughter, *felo de se*, &c. ; against a man's goods—as larceny and robbery ; against his habitation—as burglary, arson ; and against public justice—as breach of prison.—3 *Inst.* 31. And by statute—as forgery, &c.

Before the reign of Hen. I. felonies were punished with pecuniary fines ; for he was the first who, about the year 1108, ordered felons to be hanged. Since his reign, the judgment for felony continued the same by the common law, unless the offender was allowed to pray the benefit of clergy.—4 *Inst.*

124. But this custom has been recently abolished by statute \*3 Wm. IV. c. 4; by which statute the particular crimes which, for their enormity, ought to be punished with death, are expressly mentioned; and all other felonies shall be punished by banishment or transportation, or by imprisonment with hard labour.

See further on this subject, title "Punishment."

In all felonies, the offender forfeits to the king all his goods and chattels, absolutely, and the profits of all his freehold estates for life, and for a year and a day after his death.—1 *Inst.* 391.

But now, by the 4 & 5 Vic. c. 24, § 21, after punishment endured, the same shall have the like effects as a pardon. § 23. Costs of prosecution, in all cases, to be paid out of the public funds, and no such fees shall in any case be demanded of or payable by the accused.

### FENCES.

By 4 & 5 V., c. 25, § 32, if any person shall steal or shall cut, break or throw down, with intent to steal, any part of any live or dead fence, or any wooden post, pale or rail, set up or used as a fence, or any stile or gate, or any part thereof respectively, every such offender being convicted thereof before a justice of the peace, shall, for every such offence, forfeit and pay over and above the value of the article or articles so stolen, or the amount of the injury done, such sum of money not exceeding £5, as to the justice shall seem meet.

By 4 & 5 V., c. 26, § 23, if any person shall unlawfully and maliciously cut, break, throw down, or in any wise destroy any fence, of any description whatsoever, or any wall, stile or gate, or any part thereof respectively, every such offender, being convicted thereof before a justice of the peace, shall forfeit and pay over and above the amount of the injury done, such sum of money not exceeding £1, as to the justice shall seem meet.

By the Municipal Act 12 V., c. 81, the township municipalities are authorised to make by-laws for "settling the height and description of lawful fences."

See also *post* title "Line Fences and Watercourses."

### FERRIES.

\*By statute 37 G. III., c. 10, justices in sessions are empowered to make such rules and regulations as shall appear necessary at ferries, and to establish rates and fees to be taken thereat, a list or table of which rules and regulations, rates and fees, shall be set up in some conspicuous place at such ferries,

and any one justice rate or fee forfeit 20s by distress the district

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and any person having charge of a ferry, convicted before any one justice of demanding or receiving any higher or greater rate or fee, or of any breach of the rules or regulations, shall forfeit 20s. to be recovered before any one justice, and levied by distress and sale, one-half to the informer, and the other to the district.

By 12 V. c. 80, so much of the above statute as vests any powers in the magistrates in quarter sessions, is repealed; and by the 12 V. c. 81, the Council of each county is authorized to make by-laws for regulating ferries, &c.

By 8 V., c. 50, § 1, any person unlawfully interfering with the rights of any licensed ferryman, by taking, carrying and conveying at any such ferry across the river or stream there, any person, cattle, carriage or wares, in any boat, vessel or other craft, for hire, gain, reward, profit or hope thereof, or doing anything to lessen the tolls and profits of such ferry, upon being convicted thereof before a justice of the peace, shall forfeit and pay such sum, not exceeding £5, as to such justice shall seem meet, to be paid to the party aggrieved, (*except when examined as a witness*;) and in such case the money shall be applied in the same manner as for a breach of the peace; § 2, if not immediately paid, the offender may be committed to the common gaol for any term not exceeding two calendar months, unless the penalty and costs sooner paid. § 3. License for a ferry to be under the great seal of the province. § 4. Defendant may appeal to the next general quarter sessions to be holden not less than twelve days after conviction. § 5. Ferries not to extend any greater distance than one mile and a-half on each side of the point at which the ferry is usually kept, unless where limits previously established.

See general form of "Conviction," &c.

### **FINES.**

\* By statute 11 G. IV., c. 1, it is enacted, that in all cases in which, by the criminal law of England, the whole or any part of any fine or penalty, imposed for the punishment of any offence, is in any manner appropriated for the support of the poor, or to any parochial or other purpose, inapplicable to the existing state of the province, such fine or penalty, or such part thereof as shall be so appropriated, shall be paid, when received, to the treasurer of the district, for the use of the district, and to be accounted for in the same manner as assessments.

### **FIRE.**

\* By statute 32 G. III., c. 5, justices in quarter sessions are empowered to make such orders and regulations for the pre-

vention of accidental fires, as to them shall seem meet and necessary, and to appoint firemen or other officers, for the purpose of extinguishing the same, and to make such orders and regulations as to them shall seem fit or necessary, in any town or place where there may be forty storehouses, within half a mile square.

By 4 & 5 V., c. 43, § 1, the \*7 G. IV., c. 8, is repealed. § 2 enacts, that whenever any company or companies shall have been regularly enrolled in any city, town, or place in which the formation of companies of firemen is by law authorised and regulated, it shall be lawful for the corporate authorities or board of police in such city or town, or if no such authorities, for the justices of the peace of the district in general quarter sessions assembled, or the majority of them, being satisfied of the efficiency of such persons and accepting their enrolment, to direct the clerk of the peace for the district to grant to each member of such company a certificate that he is enrolled in the same, which certificate shall exempt the party during his enrolment and continuance in actual duty as such fireman, from militia duty in time of peace; from serving as a juryman or a constable, and from all parish and town offices. § 3 authorises corporate authorities or board of police in any city or town, or if no such authorities, then the justices of the peace for the district, or the majority of them at any general or adjourned session, upon complaint to them made of neglect of duty by any individual of such fire company, to examine into the same; and for any such cause, or in case any individual of such company shall be convicted of a breach of any of the rules legally made for the regulation of the same, to strike off the name of such individual from the list of the company, and thenceforward the certificate granted to such individual shall have no effect in exempting him from any duty or service before mentioned: Provided always, that it shall be in the discretion of the corporate authorities or boards of police, or of the justices of the peace for the district, as aforesaid, respectively to consent to the formation as aforesaid of any fire company in any such city, town, or place as aforesaid, or to defer the same, as may be deemed expedient: also in their discretion to discontinue or renew any such company.

By the Municipal Act 12 V., c. 81, § 51, any person who shall light a fire in any of the streets, lanes, or public places of any of the said police villages, shall for every such offence incur a penalty of 5s. currency, to be sued for and recovered by the inspecting trustee, before any one justice residing within five miles of such village, and to be levied by distress and sale, and applied to the repairs and improvements of the streets and lanes.

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**FIREMEN.**

By 12 Vic. c. 36, members of enrolled companies of firemen who have regularly and faithfully served seven consecutive years, shall be entitled to a certificate thereof from the clerk of the peace, which shall exempt them from serving in the militia in time of peace, and from all parish and town offices.

**FIREWORKS.**

By statute 9 & 10 W. III. c. 7, § 1, making or selling, or throwing fireworks from any house into any public street or road, shall be adjudged a common nuisance; and by § 2, any person selling fireworks, or implements for making the same, shall, upon conviction before one justice, on oath of two witnesses, forfeit £5, half to the poor, and half to the prosecutor, to be levied by distress; and any person permitting same to be cast or thrown from his house into any public street or road, shall forfeit 20s. § 3. And any person who shall cast, or fire, or aid in casting or firing any, shall forfeit 20s.; and if not immediately paid, shall be committed to the house of correction, to be kept to hard labour, not exceeding one month.

*Information for selling Fireworks.*

County of — } Be it remembered, that on the — day of — in  
to wit. } the year of our Lord 18— at — in the county  
of —, A. B. of — &c. gentleman, cometh before me J. C. Esq.,  
one of her Majesty's justices of the peace for the said county, and  
giveth me, the said justice, to understand and be informed, that C. D.  
of — shopkeeper, at his shop in — on the — day of — last,  
unlawfully, and against the form of the statute in that case made and  
provided, did utter and sell to one E. F. certain squibs, crackers, rockets  
and other fireworks, to wit, [*here state the particular fireworks*] whereby  
the said C. D. by virtue of the said statute, hath for the said offence  
forfeited the sum of £5; therefore the said A. B. prayeth the judgment  
of me, the said justice, in the premises, and that he may have one-half  
of the said forfeiture.

Exhibited before me.

*The like for throwing Fireworks.*

County of — } That C. D. late of — in the county of —, laborer,  
to wit. } at the town of — in the said county, in the public  
street and highway, there did unlawfully throw, cast and fire, certain  
fireworks, to wit, (squibs, &c.) against the form of the statute in that  
case made and provided, whereby, &c., the said C. D. hath for his said  
offence forfeited the sum of 20s. wherefore he prayeth &c. [as before].

[The above informations should not be upon oath, but, at the hearing, the facts must be proved on oath by two witnesses at least.] See general form of "Conviction," &c.

## FISH.

By statute 3 W. IV. c. 30, entitled, "An Act to protect the white fish fisheries, in the straits or rivers Niagara, Detroit and Saint Clair, in this province," a penalty of £125 is imposed upon any person using any seine or net for the taking of white fish, in any of the above waters, of a greater length than 50 fathoms. § 2. Also a penalty of £50 on persons fishing on Sunday. § 3. And a penalty of £125 for attempting to divert the natural progress or running of the white fish, by shingling or other device; or imprisonment, not exceeding three months. § 4. Fishing in front of lands of another individual (except in the channel) subject to a penalty of £50. § 6. The above penalties to be recovered by action of debt, with costs of suit, before any court of competent jurisdiction; one moiety to the informer, and the other to the province.

By statute 3 V. c. 24, § 1, the governor may appoint one or more inspectors of fish. § 2. Inspectors before entering upon the duties of their office to take the following oath or affirmation:

I do solemnly swear, or affirm (*as the case may be*) that I will faithfully, truly and impartially, according to the best of my judgment, skill and understanding, execute, do and perform the duty and office of an inspector of fish, according to the true intent and meaning of the act, intituled, "An act to regulate the inspection of fish, and to prevent non-residents in this province from fishing within the waters of the same."

§ 3. Inspector to make annual returns to the clerk of the peace, in the month of January, of the quantity of fish inspected by him during the year preceding the 1st January, specifying the quantity of each quality inspected. § 4. It shall be the duty of the inspector, on application being made for that purpose, to proceed to inspect all fish, by opening one of the heads of each barrel or half barrel, and if the same is found to contain sound and merchantable fish, with a sufficient quantity of salt to preserve the same, he shall then brand the same, as hereinafter provided, on the head of such barrel or half barrel; and if the fish are found unsound or not merchantable, the same shall be destroyed by the inspector; and if the barrel or half barrel is not full, or not salted with a sufficient quantity of salt, in that case the said inspector shall fill the same with sound or merchantable fish, or add such quantity of salt as he may deem requisite. Each barrel to contain *two hundred pounds*, and each *half barrel one hundred pounds*. § 5. Each barrel or half barrel shall be filled with fish of one and the same kind, and the inspectors shall brand in plain legible letters on the head of each barrel or half barrel of fish inspected by them respectively No. 1 or No. 2, representing the quality of the

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fish packed or re-packed, and they shall also brand on the head of each barrel or half barrel the species of the fish, the initials of the christian name and the whole of the surname of the inspector, the name of the district in which such fish was inspected, and the words "Upper Canada." § 6. If any person shall intermix, take out, or shift any fish of any barrel or half barrel inspected and branded as by this act required, or put into any barrel or half barrel inspected and branded, any other fish for sale or exportation, or alter the face of or change the brand or mark of any inspector contrary to this act, the offender shall forfeit and pay £5 on conviction before any two justices, upon the oath of one or more witnesses: such penalty, if not paid in three days after conviction, to be levied of the goods and chattels of the offender as hereinafter provided. § 7. All pickled fish duly inspected in any district in this province, shall not be liable to re-inspection in any other district, and may be shipped and exported to any foreign port. § 8. All barrels or half barrels used for packing and re-packing pickled fish, shall be manufactured in this province, and shall be made of sound well seasoned white, red or black oak, white ash, or white pine timber. The barrels and half barrels shall be well hooped with at least ten good hoops each, and shall be made in a workmanlike manner. The fees for inspecting and branding shall be, for each barrel 6d. currency, and for each half barrel 4d. currency; and for overhauling, re-packing, inspecting and branding, for each barrel 1s. and for each half barrel 7d. exclusive of cooperage; and for every bushel of salt or part thereof so consumed as aforesaid, the value of such salt according to the market price thereof at the time and place of such inspection; the fees and charges to be paid by the person employing the inspector. § 9. If any inspector shall be guilty of any fraud or neglect in inspecting fish, or of offering any fee or reward to owners of fish or their agents, or to any other person, in order to obtain the profits of inspecting or re-packing the same, or shall brand any barrel or half barrel containing fish contrary to this act, or which has not been actually inspected, or shall permit any other person to use his brand in violation or evasion of the provisions of this act, he shall, on conviction before any two justices of the district, upon the oath of one or more witnesses, forfeit and pay £10, and in default of payment within six days after conviction, such justices, or any one of them, may issue an execution against such inspector's goods and chattels, as by any law of this province is authorized in judgments awarded in the Court of Requests. § 10. No person not residing in this province shall fish within the waters of Upper Canada, or be directly

or indirectly engaged in the same, either as owner or agent, or part owner of a seine, or as a partner, or have any seine, net or line upon any part of the beach of the waters of this province: and every person so offending shall be liable to be imprisoned for a period not less than thirty days nor exceeding ninety days, upon the oath of one or more credible witnesses.

§ 11. If it shall appear to the inspector that a part of the fish in any barrel or half barrel inspected by him is sound and part unsound, it shall be lawful for said inspector to separate the sound from the unsound, and re-pack the sound fish, and add such salt or pickle as he may judge necessary, and brand the same as aforesaid, and such fish as the inspector shall judge not capable of preservation he shall condemn as bad. § 12. This act not to apply to any fish packed out of the province and imported.

### FLOUR AND MEAL.

By 4 & 5 V., c. 89, reciting, that it was expedient that the regulations now in force in the different sections of the province, with regard to the packing and inspection of flour and Indian meal, should be repealed, and one uniform law enacted for the whole province, and that the inspection of the articles aforesaid, intended for exportation, should *cease to be compulsory*, and be left *optional* with the parties interested. It is enacted by § 1, that the ordinance 25 G. III. and the Lower Canada acts of the 46 G. III., c. —, and the 58 G. III., c. —, and the 2 G. IV., c. —, and the ordinance of the 2 V., c. —, and the Upper Canada acts of the \*41 G. III., c. 7, \*60 G. III., c. 5, and all other acts or laws in force within this province, relating to the packing, branding, inspecting or exportation of flour and Indian meal, shall be repealed. § 2 authorises the board of trade in Quebec, Montreal, Toronto and Kingston, and the municipal authorities in other places, where inspectors may be required, to appoint a board of examiners, with power to remove them and appoint others; such board, in Quebec and Montreal, to consist of *five*, and in other places of *three* fit, proper and skilful persons, residents of the place, who before acting shall take and subscribe the following oath, before any justice of the district:—

I, A. B. do swear, that I will not, directly or indirectly, personally or by means of any person or persons on my behalf, receive any fee, reward or gratuity whatever, by reason of any function of my office, as examiner, and that I will therein well and truly in all things act, without partiality, favour or affection, and to the best of my knowledge and understanding. So help me God.

§ 3. The mayor of Quebec, Montreal and Toronto, and Kingston, and the warden or chief municipal officer of any

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other place, shall, by an instrument under his hand and corporation seal, nominate and appoint one inspector of flour and meal for each of such places, and remove and appoint another in his stead; such inspector to be previously examined before the board of examiners, as to fitness, character and capacity; no person to be appointed unless recommended by such board or a majority of them; nor in any place where there is a board of trade, except on the requisition of such board; such inspector, before acting, to furnish *two* sureties in £500, jointly and severally, if for Quebec and Montreal, and in £250 for Toronto, Kingston and other places, to be approved of by the mayor or chief municipal officer appointing such inspector, who shall not allow any person to act for him except his sworn assistants.

§ 4. Inspector's bond to be kept at the office of the clerk of the corporation, and open for inspection on payment of 1s. 3d.

§ 5. Board of examiners may, before examination of such inspector, require the attendance of two or more persons of experience in the manufacture of flour and meal, or of the qualities thereof; such examination to be open to the public, who may attend and propose questions. § 6. Inspector, before acting, shall take and subscribe the following oath, before any justice of the district:—

I, A. B. do solemnly swear, that I will faithfully, truly and impartially, to the best of my judgment, skill and understanding, do and perform the office and duty of an inspector of flour and meal, and that I will not, directly or indirectly, by myself or by any other person or persons whomsoever, trade or deal in flour or meal, or be connected in any such trade, nor purchase any flour or meal of any description, otherwise than for the use and consumption of my family, during the time I shall continue such inspector. So help me God.

§ 7. Inspectors now in office to be re-appointed, but to be removable and give security as other inspectors. § 8. Inspector for Quebec and Montreal to appoint as many assistants as may be required by the board of trade, for whose acts he shall be responsible; such assistants to be approved by the board of examiners, and to furnish *two* sureties in £250, and take and subscribe the following oath before the mayor:—

I, A. B. do swear, that I will diligently, faithfully and impartially, perform the duties of the office of assistant to the inspector of flour and meal for the city of — according to the true intent and meaning of the act of the legislature of this province, intituled, "*An act to regulate the inspection of flour and meal,*" and that I will not, directly or indirectly, personally or by means of any person or persons in my behalf, receive any fee, reward or gratuity whatever, by reason of my office of assistant to the said inspector, (*except my salary from the said inspector*), and that I will not, directly or indirectly, trade in the articles of

flour or meal, or be in any manner concerned in the purchase or sale of flour or meal, except so far as may be necessary for the use of myself and family. So help me God.

§ 9. Assistants to hold their office at the pleasure of the inspector. § 10. Inspectors and assistants required to examine and inspect every barrel, and half barrel, of flour and meal, on application by the proprietor, and to ascertain the qualities and conditions thereof by boring the heads, and probing the contents, to the whole depth of the cask, by an instrument not exceeding five-eighths of an inch diameter, within the gauge or bore of such instrument, and after inspecting shall plug the hole bored; such inspection may be made at the storehouse of the inspector, to be kept in a convenient place, or at some store within the limits of the place, at the option of the proprietor. § 11. Inspector, if required, to deliver to the owner the flour or meal taken from the barrel on inspection, under the penalty of £5. § 12. Inspector to provide brands, and, immediately after inspection, brand on every barrel or half barrel the words *Quebec, Montreal, Toronto, Kingston, Hamilton*, or any other place, as the case may be, and the initial of the christian name and surname at full length of the inspector, with the quality thereof; and on every barrel or half barrel found sour, without any other damage, shall brand the word *sour*, in letters as large as the rest of the brand; and if unsound or unmerchantable, the word *rejected*, in addition to the brand designating the quality; and for such inspection and branding, the inspector shall be entitled to receive from the person applying, for every barrel and half barrel of flour or meal, *two-pence* currency, exclusive of cooperage, to be paid before removal; and as soon as inspected, a certificate or bill of inspection shall be furnished by the inspector, without fee or reward, specifying the quantity and quality, and the charges, and the owner's or manufacturer's marks thereon; and if any inspector shall give an untrue certificate, or give any certificate without a personal examination, he shall forfeit £20 currency for each offence, and his office. And all the brands and marks shall be on one head of the barrel or half barrel; inspector in no case to brand or mark any barrel, unless the name of the manufacturer or packer, the place of packing and quality of the flour and meal, the tare and net weight, are branded or marked thereon; in all cases, where any flour or meal shall be sold, subject to inspection, the person applying to the inspector shall be entitled to the costs from the vendor, unless an agreement made to the contrary; and such agreement for inspection shall imply a warranty of the quality, and that this act has been complied with. § 13. Inspector, at the request of the buyer or seller,

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shall ascertain the weight of the casks, and if deficient, shall cause the same to be filled up by the proprietor or person requiring such inspection; inspector, refusing to weigh, shall forfeit £20 currency. § 14. Brand marks to be neat and legible, and inspector to govern himself by one uniform standard of quality; brand marks not to exceed fourteen inches long by eight inches broad, under a penalty of £5. § 15. In case of any dispute respecting the quality or condition, one justice may issue a summons to three persons, one to be named by the inspector, another by the proprietor, and the third by the justice, requiring them to examine and report their opinion thereof under oath, and the determination of the majority shall be final, and the inspector shall conform thereto and brand accordingly; costs to be paid by the party in error. § 16. Any inspector neglecting on application, within two hours thereafter, to proceed to such inspection, shall forfeit, on conviction before any one justice, on the oath of one witness, 25 currency over and above other damages. § 17. Flour or meal adulterated may be seized and detained by the inspector, and the offender liable to a penalty not exceeding £20; and if convicted within *one month*, the same shall be forfeited to the corporation of the place. § 18. Every manufacturer or packer who shall undermark the tare of any barrel, or put in a less quantity than is branded, shall incur a penalty of 20s. currency for every barrel or half barrel. § 19. And any person offering for sale any barrel or half barrel deficient in weight, shall forfeit 20s. currency. § 20. Inspectors not to trade in flour or meal, under the penalty of £20 currency for each offence. § 21, 22 and 23 repealed by the 13 & 14 V., c. 29.— § 24. Flour barrels to be made of seasoned oak or ash lumber, as nearly straight as may be, and the staves 27 inches from croe to croe; half barrels 22 inches from croe to croe, with heads of the same; diameter of the heads of barrels from 16½ to 17 inches; half barrels from 13½ to 14 inches; both to be well seasoned and bound with at least ten wooden hoops, three at each end with a lining-hoop within the chimes, the whole well secured by nails, under the penalty of two shillings for every cask offered for sale or exported of a contrary description. § 25. If any manufacturer or packer, or any other person, shall, with a fraudulent intent, efface or obliterate from any barrel or half barrel, having undergone inspection, any of the inspector's marks, or shall counterfeit such mark, or shall empty or partially empty any barrel or half barrel, marked after inspection, in order to put in other flour or meal, or shall use any old barrel or half barrel, without destroying the old marks or (not being the inspector or his assistant) shall brand

with the inspector's marks; and if any person, in the employ of any manufacturer or packer, shall hire or loan out the marks of his employer, the offender shall forfeit £50 currency; and any inspector or assistant inspecting or branding or marking out of his limits, or hiring out his marks to any person, or conniving at any fraudulent evasion of inspection by others, shall for each offence forfeit £50 currency. § 26. All fines not exceeding £10 currency shall, except otherwise provided, be recovered by the inspector, or by any person suing, in a summary way, before any *two* justices for the district, in their ordinary or other sessions, and may, in default of payment, be levied by distress; and where exceeding £10 currency, may be recovered in any court of competent jurisdiction; and one moiety of such fines (except otherwise provided) shall be paid to the treasurer of the city, town or place, for public uses, and the other moiety to the prosecutor: Provided, if any officer of such corporation be the prosecutor, the whole penalty shall belong to the corporation. § 27. Actions to be commenced within six months. § 28. Act to commence on the 1st January, 1842; § 29, and remain in force till the 1st January, 1848, and the end of the next session.

By 11 Vic. c. 6, § 1, the 4 & Vic. c. 89, is continued until the expiration of this act. § 2. Present inspectors of flour and meal to be also inspectors of oatmeal, without renewal of bonds, oaths of office, &c. But any person hereafter appointed to the office shall be subject to examination as to his qualification for that office, and his knowledge of the qualities of oatmeal, and if appointed shall be styled inspector of flour, meal, and oatmeal. § 3. The present board of examiners to remain as such, for examining applicants for office. § 4. Inspector may appoint assistant inspectors of oatmeal, who shall be first examined by the board and skilful persons sitting with them. Such assistants to take an oath of office and give security before entering on duty; and any person found qualified may, at the same time be assistant inspector of flour and meal and oatmeal. § 5 & 6 repealed by the next act, 13 and 14 Vic. c. 29. § 7. Notwithstanding the 12 § of said act, 4 & 5 Vic. the inspector shall be entitled to the sum of *one penny* currency, and no more, for inspecting any flour, meal, or oatmeal, exclusive of cooperage, for each barrel or half barrel, inspected and branded or marked by him, or any of his assistants, to be paid by the owner or consignee, before removal. § 8. The penalties and provisions of the said act extended to like cases under this act, in respect to oatmeal. § 9. Corrects a clerical error in the 23 § of the said act, substituting the word "without" for the word "with." § 10. The provi-

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sions of this act as to the standard of quality not to affect private contracts. § 11. This act to be in force till the first day of January, and thence till the end of the next session.

By 13 & 14 Vic. c. 29, which recites that it is expedient to amend the acts relative to the inspection of flour and meal, and oatmeal, and further to *continue the same* as amended, it is enacted by § 3, that the 21 § of the 4 & 5 Vic. c. 89, and 5 & 6 § of 11 Vic. c. 6, be repealed, and in branding or marking the different qualities or descriptions of flour, the same shall be designated as follows, viz. :

That of a superior quality by the words *Extra Superfine* ; that of the second quality by the word *Superfine* ; that of third quality, by the word *Superfine* No. 2 ; that of the fourth quality, by the word *Fine* ; that of the fifth quality, by the words *Fine Middlings* ; that of the sixth quality, by the word *Middlings* ; that of the seventh quality, by the word *Pollards* ; and the quality called *Farine Entiere* by the letters E. N. T., by which latter description of flour shall be understood the whole produce of the wheat when ground, excepting the coarse bran and pollards ; and all flour, &c., branded or marked, shall be equal in quality to flour inspected at the city of New-York, in the United States, and bearing the like brand or mark of quality ; and it shall be the duty of each inspector of flour and meal in this province to procure proper and certified samples of the several qualities of flour, certified as being the correct standard, by the head inspector of flour in New-York, and to guide himself by such samples ; and in the event of any change in the number of grades or qualities of flour being adopted in New-York during the continuance of this act, it shall be the duty of the several inspectors in this province to conform to such change ; and in branding or marking the different qualities of rye flour, Indian meal, and oatmeal, the words *Rye Flour*, *Indian Meal* or *Oatmeal*, shall be plainly branded or marked on every barrel or half barrel, to designate the grain from which the same is made, and the qualities shall be designated as follows, viz. : That of any superior quality by the word *First* ; that of the next inferior quality by the word *Second* ; that of the next inferior quality, by the word *Third* ; and that of the lowest quality by the word *Unbrandable* ; and when the grain from which flour and meal of any description is manufactured has been previously kiln-dried, the same shall be branded and marked by the packer on each and every barrel or half barrel, either at length or by the word and letter *Kiln D.*

§ 4. The 22 and 23 § of the 4 & 5 Vic. are repealed. § 5. Every half barrel of flour shall contain 98 pounds net, and every barrel of flour 196 pounds net ; every half barrel of Indian meal shall contain 84 or 98 pounds net ; and every barrel shall contain 168 or 196 pounds net ; every half barrel of oatmeal 112 pounds net ; and every barrel of oatmeal 224 pounds net ; and it shall be the duty of the packer or manufacturer to brand, paint or mark the initials of his christian name, and also

brand, paint or mark his surname at full length, and the name of his mill or place of packing, the quality and weight of the flour or meal contained therein, and the tare of the cask on one end of every barrel or half barrel of flour or meal packed for sale, in a plain and distinguishable manner, under a penalty of 2s. 6d. for each barrel or half barrel offered for sale, or inspection, with regard to which the requirements of this section have not been complied with.

§ 6. Existing contracts not to be invalidated.

*Note.*—The usual continuation clause has been omitted, nor does the act direct in what way the penalties shall be enforced.

### **FORCIBLE ENTRY AND DETAINER.**

#### *What is a Forcible Entry.*

A forcible entry is committed by violently taking possession of lands and tenements, with menaces, force and arms, and without the authority of the law.—*Bl. Com.* 148. And even if a man have a good right to the land, and enter forcibly, he may be indicted.—*Dalt. (Ed. 1727) c. 129.* A single person may commit a forcible entry as well as a number of persons.—*1 Haw. c. 64. § 8, 12, 29.* A forcible entry is made with a strong hand, with unusual weapons; an unusual number of servants or attendants; or with menace of life or limb; or, by breaking open the doors of a house, whether any person be in it at the time or not; and though a man enter peaceably, yet if he turn the party out of possession by threats, or violence, this also amounts to a forcible entry.—*1 Haw. c. 64. § 25.* But merely drawing a latch, and entering a house; or opening the window or door with a key; or entering by an open window—do not constitute a forcible entry.—*Ibid.*

#### *What is a Forcible Detainer.*

A forcible detainer, is where a person who enters peaceably, though unlawfully, detains possession by force; and the same circumstances of violence or terror which makes an entry forcible, will also constitute a forcible detainer. Therefore, whoever, after an unlawful entry, keeps in the house an unusual number of persons, or weapons, or threatens to do some bodily hurt to the former possessor, is guilty of a forcible detainer. So, if a man shuts the door against a justice of the peace, coming to view the force, and obstinately refuses to let him come in; so a lessee, who, after the end of his term, keeps arms in his house to oppose the entry of the lessor, is guilty of a forcible detainer; and the same with regard to a lessee at will, after the will is determined; or of a mortgagor, after the mortgage is forfeited.—*2 Haw. c. 64, § 30; 4 Com. Dig. 201.*

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But the mere refusal to go out of a house, and continuing therein in despite of another, does not amount to a forcible detainer.—1 *Haw. c. 64, § 30.* Therefore, if a lessee at will (after the determination of his tenancy,) merely denies possession to the lessor, or even shuts the door against the lessor when he would enter—this is not a forcible detainer.—*Cro. Car. 486.* And a man who breaks open the doors of his own dwelling-house, forcibly detained by one who has the bare custody of it, is not guilty of a forcible entry or detainer.—1 *Haw. c. 64, § 32.*

*Of the Remedy.*

At common law, a man disseised of any lands or tenements, if he could not prevail by fair means, might lawfully regain the possession thereof by force.—1 *Haw. 140.* But this indulgence of the common law having been found, by experience, to be very prejudicial to the public peace, it was thought necessary, by many severe laws, to restrain all persons from the use of such violent methods of doing themselves justice.—*Ib. 141.* Accordingly, by 5 R. II. statute 1, c. 8, none shall make entry into lands but where entry is given by law, and in such case not with strong hand nor with multitude of people, but only in lawful and easy manner. And if any do the contrary, and thereof be convicted, he shall be punished by imprisonment and ransomed at the king's will.

By 15 R. II. c. 2—at all times that forcible entries be made, and complaint thereof cometh to justices of the peace, or any of them, the same justices or justice shall take sufficient power of the county, and go to the place where such force is made; and if they find any that hold such place forcibly, they shall be taken and put in the next gaol, there to abide convict by the record of the justices or justice, till they have made fine and ransom to the king. And all they of the county, as well the sheriff as others, shall attend upon the justices, to assist them to arrest such offenders, upon pain of imprisonment, and to make fine to the king.

By 8 H. VI. c. 9, where any doth make forcible entry into lands, tenements, or other possessions, or them hold forcibly, after complaint made to the justices of the peace, or one of them, by the party grieved, the justices or justice, within a convenient time, shall cause the statute duly to be executed at the costs of the party grieved.—§ 2.

Though such persons making such entries be present, or voided before the coming of the justices; nevertheless, the justices, in some town next the tenement, or in other convenient place, shall have power to enquire by the people of the





A conviction by a justice for a forcible entry, on view, must set a fine upon the defendant, otherwise the Court of King's Bench will discharge him from a commitment on such conviction, by *habeas corpus*.—*R. v. Elwell, Str.* 794; *Ld. R.* 1514. If a fine be set, the conviction cannot be quashed on motion, but the defendant must bring his writ of error; but if no fine be set, it may then be quashed on motion—*R. v. Layton, 2 Salk.* 450.

## *Restitution*

Must be awarded by the same justices before whom the inquest was found. If a restitution shall appear to have been illegally awarded or executed, the Court of King's Bench will set it aside, and grant a re-restitution to the defendant.—*1 Haw. c.* 94, § 63, 64, 65.

The sheriff, in executing the writ of restitution, may raise the power of the county to assist; but the justices may, if they think proper, make restitution in person. A justice, or the sheriff, may break open a house to make restitution; and if the possession be avoided by a fresh force, the party may have a second writ of restitution without a new requisition, if applied for within a reasonable time.—*Haw. c.* 64, § 49, 52; *4 Com. Dig.* 204.

## *How punishable by Indictment.*

A forcible entry and detainer is also, at common law, punishable by indictment; and if three or more be concerned, it is also a riot, and may be proceeded against accordingly.—*Dalt. c.* 44.

*Record of a Forcible Detainer upon view, before three Justices (Burn.).*

[Or it may be before one Justice only.]

County of ——— } Be it remembered, that on the ——— day of ———, in  
to wit. } the ——— year of the reign of our sovereign Lady  
Victoria, at ——— in the county aforesaid, ——— complained to us ——— and  
—— esquires, three of the justices of our said lady the Queen assigned  
to keep the peace in the said county, and also to hear and determine  
divers felonies, trespasses, and other misdemeanors, in the said county  
committed, that ——— and ——— late of ——— in the said county, yeomen,  
into the messuage of her the said ——— situate within the township of  
—— in the county aforesaid, did enter, and her the said ——— of the  
messuage aforesaid, whereof the said ——— at the time of the entry  
aforesaid, was seised, as of the freehold of her the said ——— for the  
term of her life, unlawfully ejected, expelled and removed, and the said  
messuage from her the said ——— unlawfully, with strong hand and  
armed power, do yet hold and from her detain, against the form of the  
statute in such case made and provided; whereupon the said ——— then  
to wit, on the said ——— day of ——— in the year aforesaid, at the township  
of ——— in the county aforesaid, prayeth of us so as aforesaid, being

justices, that a due remedy be provided to her in this behalf, according to the form of the statute aforesaid; which complaint and prayer by us the aforesaid justices being heard, we the aforesaid — justices, aforesaid, to the messuages aforesaid, personally have come, and do the and there find and see the aforesaid — the aforesaid messuage, with force and arms unlawfully, with strong hand and armed power detaining, against the form of the statute in such case made and provided, according as she the said — hath so as aforesaid unto us complained; therefore it is considered by us, the aforesaid justices, that the aforesaid — of the detaining aforesaid, with strong hand, by our own proper view, then and there as is aforesaid had, are convicted, and every of them is convicted, according to the form of the statute aforesaid, whereupon we, the justices aforesaid, upon every of the aforesaid — do set and impose severally, a fine of — of good and lawful money of this province, to be paid by them and every of them, severally, to our said sovereign lady the Queen, for the said offences, and do cause them and every of them then and there to be arrested, and the said — and — being convicted, and every of them being convicted, upon our own proper view of the detaining aforesaid with strong hand, as is aforesaid by us, the aforesaid justices, are committed, and every of them is committed to the common gaol of our said lady the Queen, at — aforesaid, in the county aforesaid, being the next gaol to the messuage aforesaid, there to abide respectively until they shall have paid their several fines respectively, to our said lady the Queen, for their respective offences aforesaid, concerning which, the premises aforesaid, we do make this our record. In witness whereof, we the said — the justices aforesaid, to this record our hands and seals do set, at — aforesaid, in the county aforesaid, on the — day of — in the — year of the reign of our said sovereign lady the Queen.

*Mittimus for a Forcible Detainer, upon view, by one Justice. (Burn.)*

J. C. Esq. one of the justices of our sovereign lady the Queen assigned to keep the peace of our said sovereign lady the Queen in and for the county of —, and also to hear and determine divers felonies, trespasses and other misdemeanors, in the said county committed; to the keeper of her Majesty's gaol at —, in the said county, and to his deputy there, or to either of them, *greeting*:

County of —, } Whereas upon complaint this day made unto me  
to wit. { J. C. Esq., one of her Majesty's justices of the

peace for the county of —, by A. B. of —, in the said county, yeoman, I, the said justice, did immediately go to the dwelling-house of the said A. B. at — aforesaid, and there found upon mine own view C. D. late of —, labourer, E. F. late of the same place, labourer, and G. H. late of —, carpenter, forcibly with strong hand and armed power holding the said house, against the peace of our said lady the Queen, and against the form of the statute in such case made and provided; therefore I send you, by the bringers hereof, the bodies of the said C. D., E. F. and G. H. convicted of the said forcibly holding, by mine own view, testimony and record; commanding you, in her Majesty's name, to receive them into your said gaol, and there safely to

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keep them and every of them, respectively, until they shall have respectively paid the several sums of £10 of good and lawful money of this province, to our said sovereign lady the Queen, which I have set and imposed upon every of them separately, for a fine and ransom for their said trespasses, respectively. Herein fail you not, on the pain that will ensue thereon. Given at — aforesaid, in the county aforesaid, under my hand and seal, the — day of —, in the — year of the reign of our sovereign lady the Queen, and in the year of our Lord 18—.

J. C.

*Justice's Precept to Summon a Jury. (Burn.)*

County of —, } J. C. Esq., one of the justices of our lady the Queen  
to wit. } assigned to keep the peace in the said county, and  
also to hear and determine divers felonies, trespasses and other misdemeanors, in the said county committed—to the sheriff of the said county, greeting :

On behalf of our said lady the Queen I command you that you cause to come before me, at —, in the said county, on the — day of — next ensuing, twenty-four sufficient and indifferent men of the neighbourhood of — aforesaid, in the county aforesaid, every one of whom shall have lands and tenements of 40s. yearly at the least, above reprises, to inquire upon their oath, for our said lady the Queen, of a certain entry made with a strong hand, as it is said, into one messuage of one A. B. at — aforesaid, in the county aforesaid, against the form of the statute in that case made and provided; and you are to return upon every of the jurors by you in this behalf to be empanelled 20s. of issues at the aforesaid day, and have you then there this precept, and this you shall in no wise omit, upon the peril that thereon shall ensue. Witness the said J. C., at —, in the said county, the — day of —, in the — year of the reign of our sovereign lady Victoria.

*Juror's Oath.*

You shall true inquiry and presentment make of all such things as shall come before you concerning a forcible entry [or detainer] said to have been lately committed in the dwelling-house of A. B. at —; you shall spare no one for favor or affection, nor grieve any one for hatred or ill-will, but proceed herein according to the best of your knowledge, and according to the evidence that shall be given to you. So help you God.

*To the other Jurors.*

The oath that A. B., your foreman, hath taken on his part, you and every of you shall truly observe and keep on your parts. So help you God.

*The Inquisition or finding of the Jury. (Burn.)*

County of —, } An inquisition for our sovereign lady the Queen,  
to wit. } indented and taken at —, in the county of —,  
the — day of —, in the — year of the reign of our sovereign lady Victoria, by the oath of — good and lawful men of the said county, before J. C. Esquire, one of the justices of our said lady the Queen assigned to keep the peace for the said county, and also to hear and determine divers felonies, trespasses and other misdeeds, in

the said county committed, who say upon their oath, aforesaid, that A. B. of — long since lawfully and peaceably was seised in his demesne as of fee (*if not freehold, say "possessed"*) of and in one messuage with the appurtenances, in — aforesaid, in the county aforesaid, and his said possession (*or seisin*) so continued, until C. D., late of — &c., E. N. of, &c., and G. H. of, &c., and other malefactors unknown, the — day of — now last past, with strong hand and armed power, into the messuage aforesaid, with the appurtenances aforesaid, did enter, and him the said A. B. thereof disseised (*or dispossessed*), and with strong hand expelled, and him the said A. B. so disseised (*or dispossessed*) and expelled from the said messuage, with the appurtenances aforesaid, from the — day of — until the day of the taking this inquisition, with like strong hand and armed power did keep out and do yet keep out, to the great disturbance of the peace of our said — the Queen, and against the form of the statute in that case made and provided. We, whose names are hereunto set, being the jurors aforesaid, do upon the evidence now produced before us, find the inquisition aforesaid true.      A. B. &c.

*Warrant to the Sheriff for Restitution. (Burn.)*

County of — } J. C., Esquire, one of the justices of our sovereign  
to wit. } lady the Queen assigned to keep the peace in the  
county of —, and also to hear and determine divers felonies, trespasses  
and other misdemeanors, in the said county committed; to the sheriff  
of the said county of — greeting:

Whereas, by an inquisition taken before me, the justice aforesaid, at — in the county aforesaid, on this present — day of — in the — year of the reign of — upon the oaths of — and by virtue of the statutes made and provided in cases of forcible entry and detainer, it is found that C. D. &c. into a certain messuage, &c. (*as in the inquisition*) as by the inquisition aforesaid more fully appeareth of record; therefore, on the behalf of our said sovereign lady the Queen, I charge and command you, that, taking with you the power of the county (*if it be needful*) you go to the said messuage, and other the premises, and the same with the appurtenances you cause to be re-seised, and that you cause the said A. B. to be restored and put into his full possession thereof according as he before the entry aforesaid was seised, according to the form of the said statutes; and this you shall in no wise omit, on the penalty thereon incumbent. Given under my hand and seal, at —, in the said county, the — day of —, in the — year of the reign of —.

*Indictment for a Forcible Entry and Detainer at Common Law.*

County of —, } The jurors for our lady the Queen, upon their oath  
to wit. } present, that J. S., late of the township of —,  
in the county of —, gentleman, K. T. of the same township,  
carpenter, and L. W. of the same township, labourer, together  
with divers other evil disposed persons, to the number of six or  
more, to the jurors aforesaid unknown, on the — day of —, in  
the — year of the reign of our sovereign lady Victoria, with force  
and arms, to wit, with pistols, swords, sticks, staves and other offensive

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weapons, at the township aforesaid, in the county aforesaid, into a certain barn and a certain orchard, there situate and being, and then and there in the possession of one J. N., unlawfully, violently, forcibly, injuriously and with a strong hand did enter, and the said J. S., K. T. and L. W., together with the said other evil disposed persons, to the jurors aforesaid unknown as aforesaid, then and there, with force and arms, to wit, with pistols, swords, sticks, staves and other offensive weapons, unlawfully, violently, forcibly, injuriously and with a strong hand, the said J. N., from the possession of the said barn and orchard, did expel, remove and put out, and the said J. N. so as aforesaid expelled, removed and put out, from the possession of the said barn and orchard, then and there, with force and arms, to wit, with pistols, swords, sticks, staves and other offensive weapons, unlawfully, violently, forcibly, injuriously, and with a strong hand did keep out, and still do keep out, and other wrongs to the said J. N. then and there did, to the great damage of the said J. N. and against the peace of our lady the Queen, her crown and dignity.

**FOREIGN AGGRESSION.**

\* By 3 V., c. 12, § 1, reciting that it was necessary to amend the provisions of the \*1 V., c. 3, said act is therefore repealed. § 2. If any person being a citizen or subject of any foreign state or country at peace with the United Kingdom of Great Britain and Ireland, shall, after the passing of this act, be or continue in arms against her Majesty, her heirs or successors within this province, or shall commit any act of hostility therein, or shall enter this province with design or intent to levy war against her said Majesty, her heirs or successors, or to commit any felony within the same, for which any person convicted of such felony would by the laws of this province be liable to suffer death, then it shall be lawful for the Governor to order the assembling of a militia general court martial for the trial of such person, agreeably to the militia laws of this province, and upon being found guilty by such court martial of offending against this act, such person shall be sentenced by such court martial to suffer death, or such other punishment as shall be awarded by the court. § 3. If any subject of her Majesty, her heirs or successors, shall within this province levy war against her Majesty, her heirs or successors, in company with any of the subjects or citizens of any foreign state or country then at peace with said United Kingdom, or shall enter this province in company with any such subjects or citizens of a foreign state or country at peace with said United Kingdom, with intent to levy war on her Majesty, or to commit any such felony as aforesaid within the same, with the design or intent to aid and assist such last mentioned person or persons to levy war or to commit any such act of

felony as aforesaid, then such subject of her Majesty shall be liable to be tried and punished by a militia court martial, in like manner as any citizen or subject of a foreign state or country at peace with her Majesty. § 4. Any citizen or subject of any foreign state or country offending against this act, shall be deemed guilty of felony, and may, notwithstanding the above provisions, be prosecuted and tried before any court of oyer and terminer and general gaol delivery, in and for any district of this province, in the same manner as if the offence had been committed in such district, and upon conviction shall suffer death, as in cases of felony.

### FOREIGN SERVICE.

Any engagement with a foreign state is a contempt against the prerogative, and a high misdemeanor at common law.—4 *Bl. Com.* 122.

### FORESTALLING.

At the common law every practice or device to enhance the price of victuals, or other necessities of life, is held to be a misdemeanor—3 *Inst.* 196; and forestalling, in its legal signification, anciently comprehended all offences of this description, including those of *ingrossing* and *regrating*. Ingrossing is the purchase of the whole of any commodity for the sake of selling it again at a high price. Regrating signifies, properly, the scraping or dressing of cloth, or other goods, in order to sell the same again. The offences of forestalling, ingrossing and regrating, have been also especially provided against by various statutes, from the 3 & 4 Ed. VI., c. 21, downwards to the 12 G. III, c. 71; by which latter statute all the preceding statutes were repealed, leaving the offence only to be dealt with as it stood at common law, under which it still continues an indictable offence, punishable by fine and imprisonment.—*Cr. C. C.* 232.

### FORGERY.

Forgery is the fraudulent making or alteration of a writing, to the prejudice of another man's right. It is a *misdemeanor* at common law, punishable by fine, imprisonment and pillory.—4 *Bl. Com.* 247: but is made *felony* by a variety of statutes; and forgery is complete although no person be actually prejudiced by it.—*Ward's case*; *Ld. Raym.* 1461. The following instances come under the denomination of forgery:—making a fraudulent insertion, alteration or erasure, in any material part of a true instrument: converting a bond for £500 into one for £5000, by adding an 0, to the number.—1 *Haw. c.* 70, § 2. Altering a banker's note or bill of exchange, from £10 to £50.—

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*R. v. Teague*, 2 East P. C. 979. Altering the date of a bill, whereby payment is accelerated.—2 East. P. C. 852. So, if a man who is ordered to draw a will for a sick person, insert legacies in it of his own head.—3 Inst. 170. So, a man may be guilty of forgery in signing any instrument in his own name, if he represent himself to be some other person of the same name.—*Mead v. Young*, 4 T. R. 28.

## As to Forgery by Statute Law.

By 5 Eliz., c. 14, § 2, forging any false deed, charter, or writing sealed, court roll, or the will of any person, or publishing any such as true, shall subject the party to double costs and damages; be set in the pillory, &c.; and by stat. 2 G. II., c. 25, revived and made perpetual by 9 G. II., c. 18—any person forging any deed, will, bond, writing obligatory, bill of exchange, promissory note, indorsement or assignment thereof, or uttering same as true, shall be guilty of felony. By 24 G. III., st. 2, c. 37, forging the superscription of a letter, to avoid the payment of postage, is made felony.

\* By 35 G. III., c. 5, § 14, any person forging any memorial, &c., under the Registry Act, shall be subject to the pains and penalties of the 5 Eliz.

By 10 & 11 Vic. c. 9. intituled "An act to consolidate and amend the laws, and to repeal certain acts relating to the crime of Forgery:"

*The Great Seal.*—§ 1. Any person forging or counterfeiting, or altering, knowing the same to be forged or counterfeited, the Great Seal of this province, or of the late province of Upper Canada, or of Lower Canada, shall be guilty of felony, and liable to imprisonment in the penitentiary for any term not exceeding seven years. § 2. Any person forging or counterfeiting, or uttering, &c., the seal at arms of any governor, lieutenant-governor, or person administering the government, to any commission, grant, appointment, license, warrant, order, or other instrument of a public nature appertaining to the affairs of the province; or any public register book or copy, or of any entry therein, shall be guilty of felony and liable to imprisonment in the penitentiary for not less than five, nor more than fourteen years.

*Securities for Money, Wills, &c.*—§ 3. Any person forging or altering, or offering, disposing or putting off, knowing, &c., any provincial debenture, or any stamp or endorsement on or assignment thereof, or any government scrip for land, or any bank note, will, testament, codicil or testamentary writing, or any license of marriage, or any bill of exchange, or any promissory note for the payment of money, or any indorsement on,

or any assignment of any bill of exchange, or promissory note for payment of money, or any acceptance of any bill of exchange, or any undertaking, warrant or order for payment of money, with intent to defraud any person, shall be guilty of felony, and liable to imprisonment in the penitentiary for not less than four, nor more than ten years. § 4. When by any other law the forgery of any instrument or writing is made punishable with death, the offender may be indicted under this act.

**Letters Patent.**—§ 5. Any person forging or altering, or uttering, &c., any copy of letters patent, or enrolment thereof, or any certificate thereof, purporting to be given under any statute, shall be guilty of felony, and liable to imprisonment in the penitentiary for not less than three, nor more than seven years; or imprisonment in any common gaol for not more than two years.

**Bank Stock.**—§ 6. Any person forging or altering, or uttering, &c., any transfer of any share or interest in the capital stock of any body corporate, company or society; or any power of attorney or other authority to transfer such stock, or to receive any dividend or profit payable thereon; or who shall demand or endeavour to effect such transfer; or to receive any demand or profit in respect thereof, by virtue of any such forged or altered power of attorney or authority, knowing the same to be forged or altered with intent to defraud such person: or if any person shall falsely and deceitfully personate any owner of any such share, interest, dividend or profit, and thereby transfer any share or interest belonging to such owner, or thereby receive any money due to such owner, he shall be guilty of felony, and liable to imprisonment in the penitentiary for not less than four, nor more than ten years.

**Personating Owners.**—§ 7. Any person falsely and deceitfully personating any owner of any share or interest in the capital stock of any body corporate, company or society, or any owner of any dividend or profit in respect thereof; or any claimant for land from the crown; or for any scrip or allowance in lieu thereof; and thereby endeavour to receive any money due to the owner, or to obtain such land or scrip or allowance, shall be guilty of felony, and liable to imprisonment in the penitentiary for not less than three, nor more than seven years; or imprisonment in any common gaol not exceeding two years.

**Forging Names of Witnesses.**—§ 8. Any person forging the name of any witness to any power of attorney or other authority, for the transfer of any share or interest in any capital stock aforesaid, or to receive any dividend or profit, or to assign or

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transfer any right to obtain a grant from the crown of lands, or to obtain any scrip or other allowance in lieu thereof, or who shall utter any such knowingly, shall be guilty of felony, and liable to imprisonment in the penitentiary for not less than three, nor more than seven years, or imprisonment in any common gaol not exceeding two years.

**Forging Records, Deeds, &c.**—§ 9. Any person forging or altering, or uttering, &c., any notarial act or copy, *proces verbal* of any surveyor, or copy, judicial record, writ, order, return, exhibit, report, certificate or other document, or entry made or filed in any suit or proceeding, civil or criminal, in any court of justice, or with any officer of such court, or any exemplification, or authenticated or certified copy of any such documents or entry as aforesaid, deed, bond, writing obligatory, or any assignment of right to land, certificate of registration, or affidavit of execution, or any memorial of any deed, will, or other instrument, or any acquittance or receipt for goods, or any accountable receipt for money or goods, or for any note, bill or other security for payment of money, or any warrant, order or request for delivery or transfer of goods, or delivery of any note, bill, or other security for money, or any contract, promise or agreement, with intent to defraud any person, shall be guilty of felony, and liable to hard labour in the penitentiary for not less than four, nor more than ten years.

**Recognizances—Cognovits.**—§ 10. Any person acknowledging bail in the name of another, not privy or consenting thereto, or any *cognovit actionem*, or judgment, or any deed registered or enrolled, shall be guilty of felony and liable to hard labour in the penitentiary for not less than four, nor more than ten years.

**Possession of Forged Notes, &c.**—§ 11. Any person, without lawful excuse, purchasing or receiving, or having in his custody, any forged bank note, or blank bank note, knowing the same to be forged, shall be guilty of felony, and liable to imprisonment in the penitentiary for not less than three, nor more than seven years.

**Engraving Bank Notes.**—§ 12. Any person engraving, or making upon any plate, wood, or stone, or other material, any bank note, bill of exchange, or promissory note for money without authority; or any subscription thereto without such authority; or having in his custody any plate, wood, stone, or other material, or any superscription, so engraved or made; or knowingly uttering or having in his possession any paper upon which any part of such bank note &c., or subscription shall be made or printed, shall be guilty of felony, and liable to hard labour in the penitentiary, for not less than three nor

more than seven years : or imprisonment in any common gaol for not more than two years.

**Foreign Bills, &c.**—§ 13. Any person forging or altering, or uttering knowingly, any forged or altered bill of exchange, promissory note, undertaking or order for payment of money, in whatever language expressed ; or engraving or making upon any plate, wood, stone or other material, any such instrument, without authority ; or without such authority shall use, or without lawful excuse have in his possession, any plate, stone, wood or other material, upon which any such foreign bill, &c., shall be engraved or made ; or shall without authority, knowingly utter, or have in his possession any paper upon which any part of such foreign bill, &c., shall be made or printed, shall be guilty of felony and liable to hard labour in the penitentiary for not less than three, nor more than seven years, or imprisonment in any common gaol not exceeding two years.

**Statute of Elizabeth.**—§ 14. Any person subject to imprisonment under this statute shall be guilty of felony, and liable to hard labour in the penitentiary for not less than three nor more than seven years : or imprisonment in any common gaol not exceeding two years.

**Foreign Matter.**—§ 15. Where the forging or uttering any matter is in this act expressed to be an offence, if any person shall in this province forge or utter the same, in whatever place or country, out of this country, foreign or otherwise, such matter may purport to be made, and in whatever language expressed, every such person and his aiders and abettors, shall be deemed to be an offender within this act, and punishable as if the matter had purported to be made in this province : and if any person shall in this province forge, or utter any forged bill of exchange, promissory note for money, or any endorsement or assignment of such, or any deed, bond, writing obligatory, for payment of money, in whatever country out of this province the same may purport to be payable, and in whatever language expressed, such person, his aiders and abettors, shall be an offender within this act, and punishable as if the money had been payable in this province.

**General Clause.**—§ 16. That when by any law now in force, any person forging any matter whatsoever, or knowingly uttering the same, or demanding or causing anything to be done by virtue of any forged matter ; or falsely personating another, or demanding or receiving any money by virtue of any probate or letters of administration, knowing the will to be forged, or such probate &c. obtained by false oath, would be guilty of felony, and liable to any other punishment than is provided by

this act : any abettors, (and shall be liable than three, in any common gaol any law respecting

**Venue.**—§ apprehended

**Accessories.** accessories before

principals in the indictment to imprisonment

**Indictment.** to be inserted as in an indictment

**Possession.** having any such thing, lodging or occupied by the person for his own use

**Witnesses.**— witnesses.

**Repeal of Act 93.**—part of 17 of part of 25 & 26

**Commencement.** January, 1848.

By 14 Vic. forging the seal any forged process any person, any summons or process or who shall be in the pretence of the

See also 4 & 5

By 12 Vic. c. of the United States of the schedule, before shall be admitted similar articles, United States, shall when imported

(a) The other acts relating to the law of Canada, and are

this act: any person convicted of such a felony, his aiders and abettors, (and no other punishment be provided under this act) shall be liable to hard labour in the penitentiary for not less than three, nor more than ten years: or imprisonment in any common gaol not exceeding two years. This act not to alter any law respecting coin.

*Venue.*—§ 17. Offenders may be tried in the district where apprehended or in custody.

*Accessories.*—§ 18. Principals in the second degree, and accessories before the fact, punishable in the same manner as principals in the first degree; and accessories after the fact liable to imprisonment in the common gaol not exceeding two years.

*Indictment.*—§ 19. Fac simile of any matter not required to be inserted; but it shall be sufficient to describe the same as in an indictment for stealing.

*Possession.*—§ 20. Meaning actual possession, or knowingly having any such matter in any dwelling-house or other building, lodging or apartment, field or other place, open or inclosed, occupied by the offender or not; and whether such matter be for his own use or for the use of another.

*Witnesses.*—§ 21. Parties interested may be competent witnesses.

*Repeal of Acts (a).*—§ 22. *Inter alia* 13 § 4 & 5 Vic. c. 93—part of 17 § 9 Vic. c. 34—9 Vic. c. 3—50 G. III. c. 4—part of 25 & 26 § of 3 Wm. IV. c. 3—8 § 7 Wm. IV. c. 14.

*Commencement of Act.*—§ 23. Act to commence on 1st January, 1848.

By 14 Vic. c. 14, § 85, (Division Court Act) any person forging the seal or process of this court, or serving or enforcing any forged process, or delivering or causing to be delivered to any person, any paper falsely purporting to be a copy of any summons or process of the court, *knowing* the same to be false, or who shall act or profess to act under any false colour, or pretence of the process of this court, shall be guilty of *felony*.

See also 4 & 5 V., c. 93, title "Coin," ante p. 156.

### FREE TRADE.

By 12 Vic. c. 3, it is enacted that whenever under any law of the United States of America, the articles enumerated in the schedule, being the growth or production of this province, shall be admitted free of duty into the said United States, then similar articles, being the growth or production of the said United States, shall be admitted into this province free of duty, when imported direct from the United States. § 2. This act

(a) The other acts referred to as repealed, are of a private description; or relate to Lower Canada, and are not therefore inserted in this work.

## 322 **Fruit Trees.—Fugitive Felons.**

to come in force by proclamation to be issued by the Governor in Council.

### SCHEDULE.

Grain and bread stuffs of all kinds, vegetables, fruits, seeds, animals, hides, wool, butter, cheese, tallow, horns, salted and fresh meats, ores of all kinds of metals, ashes, timber, staves, wood and lumber of all kinds.

### FRUIT TREES.

See *post* title "Trees."

### FUGITIVE FELONS.

\* By statute 37 G. III., c. 15, if any person, against whom a warrant shall be issued by the Chief Justice, or any other magistrate in any of his Majesty's provinces in North America, for any felony or crime of a higher nature, shall escape, and come into any part of this province, any justice of the peace, where such felon shall be, may (upon due proof of the hand-writing of the magistrate issuing the warrant) endorse the same; which shall be a sufficient authority for the execution thereof, where such warrant shall be so endorsed. § 2. The person having such warrant, first entering into recognizance with sufficient sureties, in not less than £50, to indemnify the province against any expenses arising from the apprehension of such offender, and the magistrate to whom such application is made may take such recognizance.

\* By statute 3 W. IV., c. 7, entitled, "An act to provide for the apprehending of fugitive offenders from foreign countries, and delivering them up to justice," it is enacted, that the governor shall have power, and he is hereby authorised at his discretion, and by and with the advice of the executive council, on requisition being made by the government of any country, or its ministers or officers authorised to make the same, within the jurisdiction of which country the crimes hereinafter mentioned shall be charged to have been committed, to deliver up to justice any person who may have fled to this province, or who shall seek refuge therein, being charged with murder, forgery, larceny or other crime, committed without the jurisdiction of this province, which crimes, if committed within this province, would, by the laws thereof, be punishable by death, corporal punishment, by pillory or whipping, or by confinement at hard labour, to the end that such person may be transported out of this province to the place where such crime shall have been charged to have been committed; provided always, that this shall only be done *upon such evidence of criminality as, according to the laws of this province, would, in the opinion of*

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the governor and of the executive council, warrant the apprehension and commitment for trial of such fugitive from justice, or person so charged, if the offence had been committed within this province. § 2. And for preventing the escape of any person so charged, before any order for his apprehension can be obtained from the governor, it shall be lawful for any judge, or for any justice of the peace, within his jurisdiction, to issue his warrant for the apprehension and for the commitment of the accused, until application can be made to the governor, and an order made thereupon; which warrant shall, nevertheless, only be granted upon such evidence, on oath, as shall satisfy such judge or justice that the person accused stands charged with some crime of the description hereinbefore specified, or that there is good ground to suspect him to have been guilty thereof.

By 12 V., c. 19, reciting that,

Whereas by the tenth article of a treaty between her Majesty and the United States of America, signed at Washington, on the 9th day of August, 1842, (the ratifications whereof were exchanged at London, on the 30th day of October, in the same year,) it was agreed that her Majesty and the said United States should, upon mutual requisitions by them or their ministers, officers, or authorities respectively made, deliver up to justice all persons who, being charged with the crime of murder, or assault with intent to commit murder, or piracy, or arson, or robbery, or forgery, or the utterance of forged paper, committed within the jurisdiction of either of the high contracting parties, should seek an asylum, or should be found within the territories of the other; provided that this should only be done upon such evidence of criminality as, according to the laws of the place where the fugitive or person so charged should be found, would justify his apprehension and commitment for trial if the crime or offence had been there committed; and that the respective judges and other magistrates of the two governments should have power, jurisdiction and authority, upon complaint made under oath, to issue a warrant for the apprehension of the fugitive or person so charged, so that he might be brought before such judges or other magistrates respectively, to the end that the evidence of criminality might be heard and considered; and if, on such hearing, the evidence should be deemed sufficient to sustain the charge, it should be the duty of the examining judge or magistrate to certify the same to the proper executive authority, that a warrant might issue for the surrender of such fugitive, and that the expense of such apprehension and delivery should be borne and defrayed by the party making the requisition and receiving the fugitive; and it is, by the eleventh article of the said treaty, further agreed, that the tenth article hereinbefore recited should continue in force until one or other of the high contracting parties should signify its wish to terminate it, and no longer; and reciting, that the provisions of the Imperial act 6 and 7 V. had been found inconvenient in this province, and more especially that provision which requires that before any such

offender shall be arrested a warrant shall issue under the hand and seal of the person administering the government, to signify that such requisition as aforesaid hath been made by the authority of the United States, for the delivery of such offender as aforesaid, and to require all justices of the peace, and other magistrates and officers of Justice, within their several jurisdictions, to govern themselves accordingly, and to aid in apprehending the person so accused, and committing such person to gaol for the purpose of being delivered up to justice according to the provisions of the said treaty, inasmuch as by the *delay* occasioned by compliance with the said provision, an offender may have time afforded him for eluding pursuit; and reciting, that by the fifth section of the said act it is enacted, that if by any colonial enactment provision shall be made for carrying into complete effect, within such colony, the objects of the said act, by the substitution of some other enactment in lieu thereof, then it shall be competent to her Majesty to suspend the operation within such colony of the said imperial act, so long as such substituted enactment should continue in force there: and reciting that it was expedient to make such provision within this province accordingly.

§ 1. It is therefore enacted, that it shall be lawful for any of the judges of her Majesty's superior courts in this province, or for any of her Majesty's justices of the peace in the same, upon complaint made under oath or affirmation, charging any person found within the limits of this province with having committed, within the jurisdiction of the United States of America, or of any of such States, any of the crimes enumerated or provided for by the said treaty, to issue his warrant for the apprehension of the person so charged, that he may be brought before such judge or such justice of the peace, to the end that evidence of criminality may be heard and considered; and if, on such hearing, the evidence be deemed sufficient by him to sustain the charge according to the laws of this province, if the offence alleged had been committed therein, it shall be his duty to certify the same, together with a copy of the testimony taken before him, to the Governor or Lieutenant Governor of this province, or to the person administering the Government of the same for the time being, that a warrant may issue upon the requisition of the proper authorities of the said United States, or of any of such States, for the surrender of such person according to the stipulations of the said treaty; and it shall be the duty of the judge, or of the justice of the peace, to issue his warrant for the commitment of the person so charged to the proper gaol, there to remain until such surrender shall be made, or until such person shall be discharged according to law. § 2. In every case of such complaint, and of a hearing upon the return of the warrant of arrest, copies of the depositions upon which an original warrant in any of the United States may have been granted, certified under the hand of the

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person or persons issuing such warrant, or under the hand of the officer or person having the legal custody thereof, and attested, upon the oath of the party producing them, to be true copies of the original depositions, may be received in evidence of the criminality of the person so apprehended. § 3 authorises the Governor, upon such requisition of the United States, or any of the States, to order the delivery up of the offender accordingly; and in case of escape, the offender may be re-taken in the same manner as any person accused of crime against the laws of this province. § 4. When any person committed under this act, and not delivered up and conveyed out of the province within two calendar months after his commitment, over and above the time actually required to convey the prisoner from the gaol to which he or she may have been committed, by the readiest way out of this province, it shall be lawful for any of the judges of her Majesty's superior courts, having power to grant a writ of *Habeas Corpus*, upon application, and upon proof of reasonable notice given to the provincial secretary, to order the prisoner to be discharged, unless sufficient cause be shewn to the contrary. § 5. This act to continue during the continuance of the tenth article of said treaty, and no longer.

## Warrant to apprehend a Fugitive Felon.

County of ——— } To the constable of ——— in the county of ———.  
to wit.

Whereas A. B. of ——— in the state of New York, constable, hath this day made information and complaint upon oath, before me, J. C. Esquire, one of her Majesty's justices of the peace for the said county, that C. D. late of Buffalo, in the said State of New York, labourer, now stands charged upon oath, in the said State of New York, to wit, at Buffalo, with having feloniously stolen, taken and carried away, at Buffalo, aforesaid, fifty dollars in bank notes, of the bank of the United States, the property of one E. F. and that a warrant hath been issued at Buffalo aforesaid, for the arrest of the said C. D. for the felony aforesaid, but that the said C. D. hath, on account of the said felony, fled to and come into this province, and is now residing at ——— in the said county. These are therefore, by virtue of the statute in such case made and provided, to command you, in her Majesty's name, forthwith to apprehend and bring before me, or some other justice of the peace for the said county, the body of the said C. D. to be dealt with according to law. Herein fail not. Given under my hand and seal, &c.

## Mittimus of a Fugitive Felon.

County of ——— } J. C., Esquire, one of her Majesty's justices of the  
to wit. } peace in and for the county of ———, to the constable  
of ——— and to the keeper of her Majesty's gaol at ——— in the said  
county.

These are to command you, the said constable, in her Majesty's name, forthwith to convey and deliver into the custody of the keeper of the said gaol the body of C. D. late of —, who is charged on the oath of A. B. &c. [here state the particulars] and you the said keeper are hereby required to receive the said C. D. into your custody, in the said gaol, and him safely keep, to be dealt with, and until he shall be delivered from your custody according to law. Given under my hand and seal, &c.

### GAME.

By 7 V. c. 12, the former act (a) for the preservation of game, &c. is repealed. § 2. No person shall, after the 1st February in every year, take or kill in any manner whatever any red or grey deer, or any moose, elk, or other deer, or any fawn, until the first day of August. § 3. If any person shall take, hunt, shoot, kill or destroy any such between the 1st February and the 1st August, or any game called wild turkey, prairie hen or grouse, grouse-pheasant, partridge or quail, between the 1st February and the 1st September, or shall sell, offer for sale, buy, receive or have in his or her possession, any venison or game aforesaid, between those periods (the same having been killed after the 1st February, the proof to the contrary to be upon the party charged), or if any person shall take, shoot, kill or destroy, or shall sell, offer for sale, buy, receive or have in his or her possession any woodcock, between the first day of February and the fifteenth day of July in any year; or if any person shall at any time hereafter erect, make or set, either wholly or in part, any pen, trap, gin, net or snare, for the purpose or with the intention of entrapping, taking or snaring any wild turkey within this province, the offender shall, upon conviction of any of such offences before a justice of the peace, upon the oath or affirmation of one or more credible witnesses, or upon view had of the offence by the justice himself, pay a fine or penalty not exceeding £10, nor less than 10s. together with costs. § 4. When any person shall be charged in writing before any justice with any offence against this act, said justice shall summon the person so charged to appear before him, and if such person shall fail to appear, then (upon proof of due service of the summons, by delivering or leaving a copy at his house or usual place of abode, or by reading the same over to him personally) such justice may either proceed to hear and determine the case *ex parte*, or issue his warrant for apprehending such person and bringing him before himself or some other justice of the district, who shall proceed to hear and determine the case. § 5. The conviction to be drawn up in the following form, or in

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any other form of words to the same effect, as the case shall require, viz.:

Be it remembered, that on the — day of — in the year of our Lord — at — in the county of — (or district, riding or division, as the case may be) A. B. of — is convicted before me C. D. one of her Majesty's justices of the peace for the said county, (or district, riding, or division, as the case may be,) for that he the said A. B. did (specify the offence, and the time and place when and where the same was committed, as the case may be); and I, the said C. D., adjudged the said A. B. for his offence to pay immediately, or on or before the — day of — the sum of — and also the sum of — for costs; and in default of payment of the said sums respectively, to be imprisoned in the county gaol of the said county, (or district, or riding, or division, as the case may be,) for the space of — unless the said sums shall be sooner paid; and I direct that the said sum of — pounds (the penalty) shall be paid as follows, that is to say, one moiety thereof to the party charging the offence, and the other moiety to the treasurer of the district, to be by him the said treasurer applied according to the provisions of this act. Given under my hand and seal, the day and year first above mentioned. C. D. [L. S.]

§ 6. No conviction shall be quashed for want of form; nor warrant of commitment void by reason of any defect therein, provided it be alleged therein that the party had been convicted, and there be a good and valid conviction to sustain the same.

§ 7. In default of payment of any fine imposed under this act, together with the costs, within the period specified at the time of conviction, it shall be lawful for the convicting justice (if he deem it expedient to do so) to issue his warrant to any constable to levy the fine and costs within a certain time, to be expressed in the warrant, and, in default of distress, to commit the offender to the common gaol of the district for any term not exceeding one calendar month, unless the fine and costs be sooner paid.

§ 8. Prosecutions under this act to be commenced within three calendar months; and the evidence of any inhabitant of the county, district, riding or division, shall be admissible.

§ 9. Any person aggrieved by any conviction under this act, may appeal to the next general quarter sessions which shall be holden not less than twelve days after such conviction, and if holden in less than twelve days, then to the next ensuing general quarter sessions: provided, that such person give the other party a notice in writing of such appeal, and of the cause and matter thereof, within six days after conviction, and ten days at least before the sessions, and shall also either remain in custody until the sessions, or enter into recognizance with two sufficient sureties, before a justice of the peace, conditioned personally to appear at the sessions,

and to try such appeal, and to abide the judgment of the court thereupon, and to pay such costs as should be by the court awarded; and the court, at such sessions, shall hear and determine the matter of the appeal, and shall make such order therein, with or without costs to either party, as to the court shall seem meet, and in case of the dismissal of the appeal, or the affirmation of the conviction, shall order and assign the offender to be punished according to the conviction, and to pay such costs as shall be awarded, and shall, if necessary, issue process for enforcing such judgment. § 10. Every justice before whom any person shall be convicted, shall transmit the conviction to the next court of general quarter sessions. § 11. Actions against any person, for anything done in pursuance of this act, shall be tried in the district where the fact was committed, and shall be commenced within three calendar months, and not otherwise; and notice in writing of such action, and of the cause thereof, shall be given to the defendant one calendar month at least before the action; and in any such action the defendant may plead the general issue, and give this act and special matter in evidence at the trial; and no plaintiff shall recover in such action if tender of sufficient amends shall have been made before such action brought, or a sufficient sum be paid into court; and if a verdict shall pass for the defendant, or the plaintiff shall become non-suit, or discontinue any such action after issue joined, or if upon demurrer or otherwise, judgment shall be given against the plaintiff, the defendant shall recover his full costs, as between attorney and client. § 12. Penalties under this act shall be paid as follows, viz., one moiety to the prosecutor and the other to the treasurer of the district. § 13. Act not to extend to Indians. § 14. This act to be a public act.

By 8 V. c. 46, § 3, if any person shall hunt, shoot, take, kill or destroy any wild swan, wild goose, wild duck, teal, widgeon or snipe, between the 10th May and the 15th August in any year; or shall sell, offer for sale, buy, receive or have in his or her possession any of the above mentioned birds, between those periods, (*taken or killed after the 10th May,*) or if any person shall trap, or set traps, nets or snares, for any grouse or quail, or shall kill, or hunt, or go in quest after the same at night, (*between sunset and sunrise,*) any such person being convicted thereof before a justice of the peace, upon the oath of one or more witnesses, or upon view, shall pay a fine not exceeding £5, nor less than 5s., together with costs. § 4. Convictions to be drawn up and fines and costs levied in manner and according to form, as directed by the 7 V., c. 12. § 5. This act not to extend to Indians. § 6. County of Saguenay also exempted.

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## GAMING.

By stat. 33 Hen. VIII., c. 9, no person shall keep any common house, alley, or place of bowling, coyting, cloysh cayls, half-bowl, tennis, dicing table, carding, or any unlawful game, then, or thereafter to be invented, on pain of 40s. a-day—§ 11; and persons frequenting such house shall forfeit 6s. 8d. each time—§ 12.

Justices may enter suspected houses, and arrest and imprison the keepers and persons resorting thereto, until the keeper give security no longer to keep the said house. § 14, 15. No apprentice, journeyman artificer, serving-man, &c., shall play at unlawful games, except at Christmas, and at their master's houses, &c., or in his presence, under penalty of 6s. 8d. each time.—§ 16.

By 2 G. II. c. 28, if proved on the oath of two witnesses before any justice, or upon his own view, that any person hath used any unlawful game, contrary to 33 H. VIII. c. 9, such justice may commit the offender, unless he give security not to play in future.—§ 9.

By 16 Car. II. c. 7, § 2, if any person by any *fraud*, unlawful device, or ill practice, in playing at or with cards, dice tables, tennis, bowls, skittles, shovel-boards, or in or by cock-fighting, horse-races, dog-matches, foot-races, or *other* pastimes, or by betting thereon, shall win any money, &c., the offender shall forfeit treble the value, with treble costs, one moiety to the king and the other to the party grieved, if he shall sue within six months; and by § 3, if any person shall play at any of the said games, or any other pastime or game whatsoever (other than with and for ready money) or shall bet on such as play, and lose above £100 at any one time, upon ticket or credit, or otherwise, the securities shall be void, and the winner shall forfeit treble the value, with treble costs, if sued within a year; one moiety to the king and the other to the informer.

By 9 Anne, c. 14, any person who shall at any time or sitting, by playing at cards, &c., or by betting, lose and pay £10, the loser may, within three months, recover the same by action; and if he shall not sue within three months, then any other person may recover the same, with treble value and costs; half to the prosecutor and half to the poor. § 2. And if any person shall *fraudulently* win at cards, &c., or acquire by betting, &c., any sum of money or other valuable thing, above £10, and being convicted on indictment and information, he shall forfeit five times the value, to be recovered by the person

who shall sue. § 5. Any two justices on just cause of suspicion, may cause any person to be apprehended who has no visible means of living except by gaming, and may require security for his good behaviour for twelve months, or commit him until such security be given. § 6. And any person assaulting or challenging another, for money won by gaming, shall forfeit to the king all his goods and personal estate, and be imprisoned two years.

Upon these statutes it has been held, that a wager above £10 on a horse race is illegal—2 *Str.* 1159; 2 *Wils.* 309; and a wager to any amount, on a horse race, where the race is for less than £50, cannot be recovered; for all such races are illegal by the 13 G. III. c. 19, § 3; and if two persons play at cards from Monday evening to Tuesday evening, without any interruption, except for an hour or two at dinner, and one of them win a balance of 17 guineas, this is won at one sitting, within the 9 Anne, c. 14.—2 *Bl. Rep.* 1226. A foot race is also an illegal game—2 *Wils.* 36; and so is cricket, so far as to invalidate a bet of more than £10 upon the players.—1 *Wils.* 220.

By 10 & 11 W. III. c. 17, § 1, all lotteries are declared to be public nuisances; and by § 2, no person shall expose to be played, drawn or thrown at, either publicly or privately, or shall draw, &c., at any lottery, either by dice, lots, cards, balls, numbers or figures, or any other way, under the penalty of £500; one-third to the king, one-third to the poor, and one-third with double costs to the informer; and the offenders may also be prosecuted as common rogues: and every person who shall play, throw or draw, at any such lottery, shall forfeit £200, to be recovered in like manner.

By 10 Anne, c. 26, § 109, insurances on marriages, births, christenings or service, are prohibited under the penalty of £500.

By 8 G. I. c. 2, § 36, every person who shall keep any office for the sale of houses, lands, &c., by lottery, for the improvement of small sums of money, shall forfeit £500; and every person who shall be an adventurer therein shall forfeit double the sum paid.—§ 37.

By 9 G. I. c. 19, § 4, foreign lotteries are prohibited under the penalty of £200. By 6 G. II. c. 35, § 29, if any person shall sell or deliver any ticket belonging to such foreign lottery, he shall forfeit £200.

By 12 G. II. c. 28, § 1, if any person shall keep any office for the sale of houses, lands, goods or other things, by lottery, numbers, figures, cards or dice, he shall forfeit £200 on conviction by one justice, on the oath of one witness, or on view

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of such justice, to be levied by distress and sale; one-third to the informer, and two-thirds to the poor. The games of ace of hearts, faro, basset and hazard, are declared games and lotteries prohibited by this statute. § 2. Adventurers in such games shall forfeit £50, to be sued for and recovered as aforesaid.—§ 3.

By 13 G. II. c. 19, the game of passage, and all games with dice (backgammon excepted) are declared illegal, and within the 12 G. II. c. 28.

By 18 Geo. II. c. 34, § 1, no person shall keep any house, &c. for the game of roulet, otherwise *roly poly*, or any other game with cards or dice, prohibited by law, under the penalties of 12 Geo. II. c. 28. By § 4, witnesses may be summoned under this act, or under the 12 Geo. II. c. 28, to give evidence, under the penalty of £50, or imprisonment for six months, in case of default.

*Warrant to apprehend a Gambler, under 9 Anne, c. 14.*

County of —, } To the constable of —.  
to wit.

Whereas complaint hath been duly made before us, J. C. and S. P., Esquires, two of her Majesty's justices of the peace for the said county, that A. B. late of —, in the said county, doth frequently use to play at — in the said county, and that he hath no visible estate, nor follows any employment to maintain himself, but lives chiefly by gaming and sharpening upon other people: These are, therefore, in her Majesty's name, to require and authorise you to apprehend the said A. B. and bring him before us, or some other of her Majesty's justices of the peace for this county, to answer what shall be objected against him in that behalf, and to be dealt with according to law.

Given under our hands and seals, &c.

*Commitment for want of Sureties.*

County of —, } To the constable of —, and to the keeper of her  
to wit. } Majesty's gaol in and for the county of —.

Whereas it hath been duly proved before us, J. C. and S. P. Esquires, two of her Majesty's justices of the peace for the county of —, that A. B. of —, on the — day of —, did play at —, at the house of —, at — aforesaid, not having any visible estate or employment for his support and maintenance; and he not being able to give sufficient security for his good behaviour for the space of twelve months, as the statute directs: These are therefore, in her Majesty's name, to require and authorise you, the said constable, to convey the said A. B. to the said gaol, and to deliver him to the keeper thereof: and you, the said keeper, are hereby required to receive the said A. B. into your custody, and him safely keep in your said gaol, until he shall give security as aforesaid.

Given under our hands and seals, this — day of —.

## GAOLER.

\* By the 32 G. III., c. 8, § 14, the sheriff shall have the power to appoint, remove and discharge the gaoler. § 15. Any gaoler knowingly permitting any spirituous liquors or strong waters to be used in the gaol, or brought into the same, except by the order of a physician, shall forfeit £20. § 17. And the justices shall fix a yearly salary to be paid to the gaoler in lieu of all fees. And if the gaoler keep the prisoner more strictly than he ought of right, whereof the prisoner dieth, this is felony in the gaoler by the common law; and this is the cause, that if a prisoner die in gaol the coroner ought to hold an inquest.—3 *Inst.* 91.

For the treatment of prisoners after sentence, see title "Execution."

## GAOLS.

The gaol is the king's, but the keeping thereof is incident to the office of sheriff.—2 *Burn's J.* 430.

By the 3 Hen. VII. c. 3, those that have the custody of gaols must certify the names of all prisoners to the justices of gaol delivery, in order to their trial or discharge, on pain of £5.

By stat. 31 Ch. II. c. 2, if any person shall be committed to any prison, for any criminal or supposed criminal offence, he shall not be removed thence, unless it be by *habeas corpus*, or some other legal writ; or where he is removed from one prison or place to another within the same county, in order to his trial or discharge; or in case of sudden fire, or infection, or other necessity, on pain that the person signing any warrant for such removal, and the person executing the same, shall forfeit for the first offence £100, and for the second £200 to the party grieved. § 9. But on emergent occasions, as in the case of infectious diseases, the sheriff or gaoler, with the advice and consent of three or more justices, may, if they shall find it needful, provide other safe places (with the owner's consent) for the removal of sick or other persons out of the usual gaols. 19 C. II. c. 4, § 2. The gaoler shall not put, keep or lodge, prisoners for debt, and felons, together in one room or chamber, on pain of forfeiting his office, and treble damages to the party grieved.—22 & 23 Ch. II. c. 20, § 13.

\* By statute 32 Geo. III. c. 8, § 1, it is enacted that a gaol and court-house shall be erected in every district throughout the province. § 16. Justices in quarter sessions may frame such rules and regulations for the gaols as they may think proper, which having been approved and signed by one of the judges, shall be binding on the gaoler and prisoners. By the

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\*50 Geo. III. c. 5, until houses of correction shall be erected the common gaols shall be constituted houses of correction.

\*By 11 Geo. IV. c. 3, justices in sessions, at their first sessions after the passing of this act, shall assign limits to the gaols, not exceeding 16 acres, for the debtors.

\*By the 1 Vic. c. 5, § 1, the Lieutenant-Governor is authorised to appoint three commissioners, who, together with the chief justice, vice-chancellor, the judges of the King's Bench, and the sheriffs of the several districts, shall compose a board of commissioners, for the purposes of this act. § 2. After the passing of this act every gaol shall be erected according to a plan approved of by the commissioners, or a majority of them; and no gaol built otherwise, or that shall not, after its completion, receive their sanction, shall be deemed to be in law the gaol of such district. § 3. Contracts not completed shall be submitted, with plans and specifications, to the consideration of the board, who shall determine whether it may be expedient to proceed therewith or abandon the same, or erect such gaol wholly or in part, upon a different plan; if existing contract abandoned, the damages sustained by the contractor shall be ascertained by arbitration; the board shall appoint two arbitrators, and the contractors two, which four persons shall choose a fifth, and the award of such five, or the majority, shall be final; proceedings of such arbitrators shall be governed by the same rules, &c. and the award subject to be set aside by the Court of King's Bench, as in other cases. § 4. The sum awarded shall be paid out of the funds of the district, by order of the justices. § 5. The board of commissioners, before deciding in any case upon the plan of a gaol most proper to be adopted, shall take into their consideration the nature and extent of the ground on which the gaol is to be built; its relative situation to streets and buildings, and to any river or other water; its comparative elevation and capability of being drained; the materials of which it is to be composed; the necessity of guarding against cold and damp, and of providing properly for ventilation; the proper classification of prisoners, having respect to their age, sex, and the cause of their confinement; the best means of ensuring their safe custody, without the necessity of resorting to severe treatment; the due accommodation of the keeper of the gaol, so that he may have ready access to the prisoners, and may conveniently oversee them; the exclusion of any intercourse with persons without the walls of the building; the prevention of unwholesome nuisances from whatever cause; the combining provision for the reformation of convicts, so far as may be practicable, and for their employment, in order that the common

gaols may really serve for places of correction, according to the intention of the law; the admission of prisoners to air and exercise without the walls of the building, when that may be proper; and the enclosure of the yards and premises with a secure wall; and that regard shall also be had to the ability of the district to meet the expense of any proposed building, and to the expediency of adopting such a plan as may most conveniently and properly admit of the erection of additional cells and apartments, when the same may be required. § 6. The commissioners shall, as soon as may be convenient, frame a set of rules and regulations for the government of common gaols in this province, extending to the maintenance of the prisoners in regard to diet, clothing, bedding, and other necessities, medical attendance, religious instruction, the conduct of the prisoners, and the restraint and punishment to which they may be subjected, and also to the treatment and custody of the prisoners generally, and to the whole internal economy and management of the gaol, and all such matters connected therewith as shall be thought by them expedient; which rules and regulations shall be transmitted to the Lieutenant-Governor of this province, to be laid before each house of the legislature at their next session, and shall not take effect until after the termination of such session. § 7. First meeting of the commissioners shall be on the first Monday in May next, at which meeting arrangements shall be made for subsequent meetings; and a majority present at any meeting shall be competent to transact business. § 8. Commissioners shall make a yearly report to both branches of the legislature.

\*By the 3 Vic. c. 14, § 1, if any person shall convey or supply to any prisoner confined in any common gaol or house of correction, in any district in this province, any rum, brandy, whiskey or other spirituous liquors, contrary to such rules and regulations as have been or shall be hereafter established by law, every such offender, being duly convicted thereof by two justices, shall be liable to a fine not exceeding £2. Any person being charged on the oath of one or more witnesses, before any one justice, with any offence against this act, such justice may summon such person to appear at a time and place to be named in such summons, and if he shall not appear, then (upon proof of the due service of the summons upon such person personally) any two justices of the district may hear and determine the case *ex parte*, or issue their warrant for apprehending such person, or any one justice may, if he shall think fit, without any previous summons, issue such warrant. § 3. No conviction under this act shall be quashed for want of form, and no warrant of committal held void by reason of any defect

therein: provided, that the same shall be proved by the witnesses in such case, may be in any sum any fine in the time specified such justice the same w in default common gaol ing one call paid.

By 10 & 11 Geo. 4. c. 74. imprisonment in a common gaol limits district for be bound to within such

By stat. 4 Geo. 4. c. 78. and maliciously plant, root, or den, orchard, conservatory, or a justice of the peace the amount of £100 two pounds, any person who damage will used for the tilling, or for and growing in orchard, or convicted thereof pay, over and money not seem meet.

By 7 Vic. c. 18. throughout Tuesdays in third Tuesd



therein : provided it be alleged that the party has been convicted, and there is a good and valid conviction to sustain the same. § 4. Such justices shall have power to summon witnesses in support of the prosecution, or for the defendant ; such witnesses neglecting to attend without some reasonable excuse, may be fined by the justices assembled to try the offence in any sum not exceeding £5. § 5. In default of payment of any fine imposed under this act, together with the costs, within the time specified at the time of the conviction by the justices, such justices may issue their warrant to any constable to levy the same within a certain time, expressed in the warrant ; and in default of sufficient distress, to commit the offender to the common gaol or house of correction, for any time not exceeding one calendar month, unless the fine and costs be sooner paid.

By 10 & 11 Vic. c. 15, intituled "An Act to amend the law of imprisonment for debt in Upper Canada," it is enacted that the gaol limits shall henceforth be and consist of the whole of each district for the gaol thereof. § 7. The bail to the limits shall be bound to produce the body of any prisoner on the limits within such time as the court or judge may direct.

#### **GARDENS.**

By stat. 4 & 5 V., c. 26, § 21, if any person shall unlawfully and maliciously destroy, or damage with intent to destroy, any plant, root, fruit, or vegetable production growing in any garden, orchard, nursery ground, hot house, green house, or conservatory, every such offender, being convicted thereof before a justice of the peace, shall forfeit and pay, over and above the amount of the injury done, such sum of money not exceeding *two pounds*, as to the justice shall seem meet. § 22. And if any person shall unlawfully and maliciously destroy, or damage with intent to destroy, any cultivated root or plant used for the food of man or beast, or for medicine, or for distilling, or for dyeing, or for or in the course of any manufacture, and growing in any land open or enclosed, not being a garden, orchard, or nursery ground, every such offender being convicted thereof before a justice of the peace, shall forfeit and pay, over and above the amount of injury done, such sum of money not exceeding *twenty shillings*, as to the justice shall seem meet.

#### **GENERAL QUARTER SESSIONS.**

By 7 Vic. c. 32, the General Quarter Sessions of the Peace throughout Upper Canada, are directed to be held on the *first* Tuesdays in the months of January, April, and July, and on the *third* Tuesday in November.

## GRAMMAR SCHOOLS.

\*By statute 47 G. III. c. 6, for the establishment of public schools, the sum of £800 shall be annually paid as hereinafter mentioned. § 2. One school shall be kept in each district, and out of said £800 the sum of £100 shall be paid to every teacher. § 3. The public school for the western district shall be kept in the town of Sandwich; for the district of London, at Vittoria, (see \*48 G. III. c. 16, § 1); for the district of Niagara, in the town of Niagara; for the Home district, in the town of York, (now city of Toronto); for the district of Newcastle, in the township of Hamilton, at such place as the trustees shall appoint; for the Midland district, in the town of Kingston; for the district of Johnstown, at Brockville, (see \*59 G. III. c. 4); and for the Eastern district, in the town of Cornwall. § 4. The Lieutenant Governor shall appoint the trustees, and the trustees shall nominate a fit person as teacher, and report such nomination to the Lieutenant Governor, who may affirm or reject such nomination: the trustees may also remove any teacher, and nominate another, and report as aforesaid. § 5. Trustees authorized to make rules and regulations for the government of such schools. § 6. Salaries of the teachers shall be paid half yearly, for which the Lieutenant Governor may issue his warrant to the receiver general; such teachers producing a certificate of good conduct, signed by the trustees, or the majority of them.

\*By statute 59 G. III. c. 4, provision is made for establishing a public school in the district of Gore; § 2—and £100 per annum to pay the teacher. § 4. Annual public examinations shall be held in every district school previous to the annual vacation. § 5. Annual reports to be made by the trustees of district schools, after the public examination, to the Lieutenant Governor, to be laid before the legislature. § 6. Trustees empowered to send ten poor children to be taught gratis; § 7, to be drawn for by lot, viz:—the trustees for the common schools shall return the names of one or more, not exceeding four, from each common school to the trustees of the district schools where they shall reside, and the number shall be drawn by ballot, at a special meeting to be openly held for the purpose. § 8. Vacancies shall be filled up by a fresh ballot. § 11. No more than £50 shall be paid to the teachers, unless they have more than ten scholars. § 12. The form of the certificate required by the twelfth clause of the \*47 G. III. shall be as follows:—"At a public meeting of the trustees of the district school, upon due notice given for that purpose, a majority of the trustees being present, we certify," &c.

By statute public school c. 28, a public school kept at Long schools. And the district of Edward shall the township district school

By 4 & 5 Canada are d by his late Ma tion of school school lands, may come in shall be inves interest, and such of the di owing to the § 3. The by after the passi all unredeem of the sale of the interest an A sum not ex each of the be monies arising additional m grammar sch in any district ing £200, to provided an the inhabitant ance of the £100 per ann schools than t ated, in any t a suitable sch shall be educ miles of the c the aid to fo school) if he s received and to the Govern c. 10, repeale shall be cond ther provision

By statute \*4 G. IV. c. 27, the like provision is made for a public school in the Bathurst district; and by statute \*4 G. IV. c. 28, a public school in the district of Ottawa; § 3, to be kept at Longueuil, under the same regulations as other public schools. And by statute \*1 W. IV. c. 7, § 9, a public school in the district of Prince Edward, so soon as the county of Prince Edward shall be erected into a separate district; to be kept in the township of Hallowell, under the like regulations as other district schools.

By 4 & 5 V. c. 19, the several district schools in Upper Canada are declared to be grammar schools, as contemplated by his late Majesty George the Third, at the time of the reservation of school lands. § 2. Monies arising from the sale of school lands, now in the hands of the receiver general, or which may come into his hands, applicable to the purposes of this act, shall be invested in Upper Canada debentures at six per cent. interest, and the annual interest or rents distributed among such of the districts in Upper Canada as may require assistance, owing to the state of the school-house or other circumstances. § 3. The bursar of King's College, within three months after the passing of this act, shall transfer to the receiver general all unredeemed debentures and arrears of interest on account of the sale of school lands, to be invested in debentures, and the interest and rents appropriated as before mentioned. § 4. A sum not exceeding £100 per annum may be advanced to each of the boards of trustees for said grammar schools, from monies arising from the sale of school lands, for providing an additional master and additional means of instruction for the grammar schools in Upper Canada. § 5. Board of trustees, in any district in Upper Canada, entitled to a sum not exceeding £200, to aid in the erection of a suitable school-house, provided an equal amount be raised by subscription among the inhabitants, and they will guarantee the permanent insurance of the building. § 6. Governor authorized to advance £100 per annum out of said monies for each of two other schools than the one in the town where the court-house is situated, in any town, &c. in which the inhabitants shall provide a suitable school-house, at which not less than fifty scholars shall be educated, such additional schools not to be within six miles of the district town; and the Governor may also extend the aid to four grammar schools (besides the district town school) if he shall deem it expedient. § 7. Accounts of monies received and expended under this act to be rendered annually to the Governor, to be laid before parliament. § 8. The \*2 V. c. 10, repealed; but the management and sale of school lands shall be conducted by the council of King's College, until further provision made.

By 9 V. c. 19, referring to the 4 & 5 V. c. 19, and reciting that it was expedient to make a smaller number of scholars sufficient to enable such schools to secure the said allowance, power is given to the Governor in council to authorize the payment of the annual allowance in said act mentioned, to any board of trustees, for the use and support of two other schools than the one in the town where the court-house is situate, in any town, township or village, within any district in Upper Canada in which the inhabitants shall provide a proper school-house, at which not less than *thirty* scholars shall be educated.

### GRAND JURY.

It has been laid down in general terms, by some of the greatest lawyers, that the grand jury ought only to hear the evidence for the King—that is to say, on the side of the prosecution.—2 *Hale*, 157. But others have received this position with some qualifications.—(4 *Bl. Com.* 303.) as indeed it ought to be; for the inquest are sworn to present the truth, and nothing but the truth; and it may so happen that they may not be able to elicit truth from the witnesses on the part of the prosecution only; and they may actually be convinced of that circumstance. The true intention seems to be this, viz:—*prima facie* the grand jury have no concern with any testimony but that which is regularly offered to them with the bill of indictment, on the back of which the names of the witnesses are written; their duty being merely to inquire whether there be sufficient ground for putting the accused party on his trial before another jury of a different description. If nothing ambiguous or equivocal appear on this testimony, they certainly ought not to seek any further; but if their minds be not satisfied of the truth, so far as is necessary for their preliminary inquiry, they are not prohibited from requiring other evidence in explanation of mere facts; but they can proceed no further; for that would be to *try*, although their duty is confined merely to the question “whether there be sufficient pretence for trial.”—3 *Inst.* 25; *Dickenson*, Q. S. 96.

The grand jury are sworn to inquire *pro corpore comitatis*; and therefore, by common law, they cannot regularly indict or present any offence which does not arise within the county or precinct for which they are returned. But it seems by the common law, if a fact done in one county prove a nuisance to another, it may be indicted in either. Also by the common law, if one guilty of larceny in one county, carry the goods stolen into another, he may be indicted in either.—*Haw.* B. 2, c. 25.

The grand jury being sworn, proceed, in a private room, to

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consider the bills brought before them. Although sworn to secrecy, they may, in cases of difficulty, allow the prosecutor, or his attorney, to assist them, by marshalling the evidence, and examining the witnesses. If any doubts occur on points of law, they should return into court and obtain the opinion of the court. A majority of twelve, at the least, is necessary to find the bill; if they be equally divided, or the majority be less than twelve, it is thrown out.

A grand jury must find a *true bill*, or *no bill*, for the whole; which is now usually done by endorsing on it the words "a true bill," or "no true bill," as their decision is; and if they take upon them to find it specially or conditionally, or to be true for one part only, and not for the rest, the whole is void, and the party cannot be tried upon it, but ought to be indicted anew.

But this rule relates only to cases where the grand jury take upon themselves to find part of *the same count* to be true, and part false, and do not either affirm or deny the fact submitted to their inquiry. But where there are two distinct *counts*, viz, one for riot, and the other for an assault—the grand jury may find a true bill as to the assault, and endorse *ignoramus* as to the riot.

The grand jury may present any offence within their own knowledge, without a bill being sent before them, at the instance of an individual prosecutor, if the offence be one of which they can legally take cognizance.—*Haw. B. 2, c. 2, § 51.* This presentment is delivered into court, and the clerk of the peace then puts it into the form of an indictment, on which process may issue as in ordinary cases.

### GRAND LARCENY.

The crime of larceny was formerly distinguished by two degrees: 1, grand larceny, which by *Ord. Qu. 29 G. III., c. 3*, included the stealing of goods and chattels above *twenty shillings* sterling, and *petit larceny*, property under twenty shillings. But now, by the 4 & 5 V., c. 25, § 2, the distinction between grand larceny and petty (or *petit*) larceny is abolished, and every larceny, whatever be the value of the property stolen, shall be deemed to be of the same nature, and subject to the same incidents, as grand larceny.

See further on this subject *post* title "Larceny."

### GUARDIANS.

\* By the 8 G. IV., c. 6, the judge of the Provincial Court of Probate, and the judges of the Surrogate Court in their respective districts, upon the written application of an infant (or

**Habeas Corpus.**

*minor*) residing within the jurisdiction of such judge, and not having a father living, nor a legal guardian, after 20 days' public notice of such application, and proof of 20 days' notice to the mother of such infant, or proof to the satisfaction of such judge, that such infant has no mother living in this province, may appoint some suitable and discreet person or persons to be guardian or guardians of such infant, and to require from such guardians a bond in the name of such infant, in such sum as the judge shall direct, conditioned for the faithful performance of the trust, and that such guardians will, when their ward shall become of age, or whenever such guardianship shall be determined, if thereto required, render to such ward a true and just account of the property of such ward which shall have come into their hands, and, without delay, deliver and pay over to said ward the property or balance in hand, deducting a reasonable sum for expenses, which bond shall be recorded by the registrar of said court. § 2. The guardians during their office shall have full authority to act on behalf of their ward, and prosecute or defend in his name, and shall have the charge and management of the real and personal estate of such ward, and, with the approbation of two justices, may bind such ward apprentice. § 3. The judge, or his successor, shall have power to remove such guardians, upon reasonable complaint, and appoint others. § 4. And when the property shall be situated in one district, the right of appointment shall belong to the Surrogate Court; and if in two districts, then to the Court of Probate; which court shall also be a court of appeal. § 5. Appeal shall lie from the Court of Probate to the governor in council. § 6. And the following fees may be demanded and taken by the respective officers:—

*Official Principal, or Surrogate Judge.*

	£	s.	d.
For the appointment of a guardian, with seals thereto.....	0	15	0
For auditing a guardian's account, when required so to do ..	0	10	0
For an order for removing a guardian from his guardianship.	0	3	4

*Registrar.*

For entering the appointment of a guardian .....	0	2	6
For entering an order of the judge.....	0	2	6
For drawing and recording a bond of guardianship.....	0	6	8
For copies given out of his office—the same as in cases of probate.			

**HABEAS CORPUS.**

If bail cannot otherwise be obtained, the law hath provided a remedy in most cases, by the Habeas Corpus Act, 31 Geo. II. the substance of which is briefly this:—If the commitment is

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for treason or felony, plainly and specially expressed in the warrant of commitment; also, if any person is committed, and charged as accessory before the fact to any petty treason or felony, or upon suspicion thereof, or with suspicion of petty treason or felony, which petty treason or felony shall be plainly and specially expressed in the warrant of commitment; in such cases the person shall not be bailed on a writ of *habeas corpus*; otherwise he may be bailed. Also, if a person is committed for treason or felony, specially expressed, yet, if he shall be in open court the first week of the term, or first day of assize, petition to be tried, and shall not be indicted some time in the next term or assize after the commitment, he shall upon motion, the last day of the term or assize, be bailed, unless it shall appear to the judge, upon oath, that the King's witnesses could not be produced within that time, and then, if he is not tried in the second term or assize, he shall be discharged. Previous to the aforesaid bailment, the prisoner, or some person on his behalf, shall demand of the officer or keeper a true copy of the warrant of commitment, which he shall deliver in *six hours*, on pain of £100, to the party grieved, for the first offence; and £200 and forfeiture of his office for the second: then application is to be made in writing by the prisoner, or any person for him, attested and subscribed by two witnesses, who were present at the delivery thereof to the court of Chancery, King's Bench, Common Pleas, or Exchequer; or if out of term time, to the lord chancellor or one of the judges; and a copy of the warrant of commitment shall be produced before them, or oath made that such copy was denied; but if any person hath wilfully neglected by the space of two terms to apply for his enlargement, he shall not have a *habeas corpus* granted in the vacation. This being done, the lord chancellor or judges, respectively, shall award a *habeas corpus*, under the seal of the court, on pain of £500, to be marked in this manner, *per statutum tricesimo primo Caroli secundi regis*, and signed by the person that awards the same, and shall be directed to the officer or keeper, returnable *immediately*; and the charges of bringing the prisoner shall be ascertained by the judge or court that awarded the writ, and endorsed thereon, not exceeding twelve pence a mile: then the writ shall be served on the keeper, or left at the gaol with any of the under officers, and the charges, so indorsed, shall be paid or tendered to him, and the prisoner shall give bond to pay the charges of carrying him back, if he shall be remanded, and that he will not make any escape by the way. This done, the officer shall, within three days after service, (if it is within twenty miles) return the writ, and bring the body, and shall then certify the

true cause of the imprisonment; if above twenty miles and less than one hundred, then within ten days; if above one hundred, then within twenty days; on like pains as before. But, after the assizes are proclaimed for the county where the prisoner is detained, he shall not be removed, then if it shall appear to the lord chancellor or judges that the prisoner is detained on a legal process, order or warrant, out of some court that hath jurisdiction of criminal matters, or by warrant of a judge or justice of the peace, for matters for which by the law he is not bailable, in such case the prisoner shall not be discharged: if he shall be discharged, he shall thereupon enter into recognizance to appear on his trial, and the writ and return thereon, and recognizance, shall be certified into court where the trial must be; but persons charged in debt, or other action, or with process in any civil cause, after their discharge for a criminal offence, shall be kept in custody for such other suit; and persons so set at large shall not be recommitted for the same offence, unless by order of court, on pain of £500 to the party grieved.

#### HAWKERS AND PEDLARS.

\*By 56 G. III., c. 34, § 1, hawkers, pedlars and other trading persons were required to take out a license, as directed by the act (*the first and second clauses of this act are repealed by the next act, 58 G. III. c. 5*). § 3. British born subjects, or subjects by naturalization, or by conquest, selling leather, hollow ware, farming utensils, or any printed papers published by authority, they being the growth, produce, or manufacture of this province; and persons who are the real makers of any goods, wares or merchandize, of the manufacture of this province, or his, her, or their children, apprentices, agents or servants; as also tinkers, coopers, glaziers, harness menders, or any other person usually trading in mending kettles, tubs, household goods or harness; and hucksters, or persons having stalls or stands in the markets, and exposing to sale fish, fruit, victuals, or goods, wares and merchandize, in such stall or stands, being British subjects, and complying with the rules and regulations respecting such stalls—are all exempt from the hawker's license duty. § 14. This act not to authorise any person to sell any goods which shall not be the bona fide property of the person so licensed. § 15. No license necessary for the sale of wheat, flour, pease, beans, oats, barley, Indian corn and meal, rye, staves and heading, oak, pine and fir timber, and other lumber, pot and pearl ashes, furs and skins, (not dressed) beef, (fresh) sheep, swine, and live cattle, cheese, butter, and all other articles of provision.

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\*By 58 G. III., c. 5, § 2, (continued by the 4 \*G. IV. c. 18—\*9 G. IV. c. 8, and by the \*2 V. c. 23, made perpetual,) every hawker, pedlar, petty chapman, and any trading person or persons, such person or persons having taken the oath of allegiance to his Majesty, going from town to town, or to other men's houses, or who have not become householders, by permanent residence in any town or place within this province by or for the space of one year previous to the passing of this act, or travelling either on foot or with a horse or horses, mule or mules, or other beast, bearing or drawing burthen, boat or boats, decked vessels or other craft, or otherwise, within this province, carrying to sell or exposing to sale any goods, wares or merchandize, shall, from and after the 5th April, in this and every ensuing year, take out a license, for which license there shall be paid the following sums:—For every man traveller on foot, £5; for every horse, ass, or mule, or other beast, bearing or drawing burthen, an additional £5; for every man sailing with a decked vessel, trading and exposing for sale, goods, wares and merchandizes, on board, or from the same, £20; for every man trading with a boat or other craft, and exposing for sale goods, wares and merchandize, for each boat or craft, £20. By § 3, any justice of the peace, collector, deputy collector, constable or peace officer, may seize and detain any such hawker, &c., who shall be found trading without a license, or being found trading, shall neglect or refuse to produce a license according to this act after being required so to do, in order to his being carried before three or more justices, nearest to the place where such offence shall be committed, who are thereby required, either upon the confession of the party offending, or due proof by witness or witnesses, other than the informer, upon oath, that the person so brought before them had so traded as aforesaid, without a license; and in case no such license shall be produced before such justices, the said justices, by warrant under their hands and seals, directed to a constable or other peace officer, shall cause a sum not exceeding £20, nor less than £5, with reasonable costs, to be forthwith levied, by distress and sale of the goods, wares and merchandize of such offender, or of the goods with which such offender shall be found trading, and for want of sufficient distress, the offender shall be committed to the nearest gaol of the district, for a time not exceeding six months, nor less than one month. § 5. One moiety of all penalties under this act to go to the King for the use of the province, and be paid to the receiver general, and the other moiety to the informer.

By 3 V. c. 9, § 6, licences are to be issued by the District Inspector.

*Information. (Archbold.)*

County of —, } Be it remembered, that on the — day of — in  
to wit. } the year of our Lord — at —, in the said  
county, A. B. of —, in the county aforesaid, yeoman, who as well  
for our sovereign lady the Queen as for himself doth prosecute in this  
behalf, personally cometh before J. P., Esq., R. S., Esq., and T. U.,  
Esq., three of her Majesty's justices of the peace for the said county,  
and residing nearest to the place where the offence hereinafter men-  
tioned was committed, and as well for our said lady the Queen as for  
himself informeth us, that C. D., late of —, in the county aforesaid,  
labourer, on the — day of —, in the year aforesaid, being then a  
hawker, (*hawker, pedlar, petty chapman, or any other trading per-  
son*), going from town to town, (*or to other men's houses*) and travelling  
on foot &c. (*or as the case may be*) in that part of the province of Canada  
heretofore constituting the province of Upper Canada, carrying to sale,  
and exposing to sale, divers goods, wares and merchandizes, did at —  
in the said county, as a hawker, as aforesaid, expose to sale, (*or carry  
to sale*) divers goods, wares and merchandizes, to wit, (*five pieces of  
linen, three pieces of muslin, one hundred yards of lace, &c.*) with-  
out such license as in that behalf is required by the statute in that case  
made and provided, contrary to the form of the statute in such case  
made and provided; whereby, and by force of the statute in such case  
made and provided, the said C. D. hath forfeited for his said offence the  
sum of twenty pounds, wherefore the said A. B. who sueth as afore-  
said, prayeth the consideration of us, the said justices, in the premises,  
and that the said C. D. may be convicted of the offence aforesaid, and  
that one moiety of the said forfeiture may be adjudged to our said lady  
the Queen, and the other moiety thereof to the said A. B. according to  
the form of the statute in that case made and provided; and that the  
said C. D. may be summoned to appear before us, and answer the pre-  
mises, and make his defence thereto. Exhibited before us, &c.

The above information need not be upon oath; the complainant  
should merely subscribe his name thereto.

**Conviction.**

As the act does not provide any particular form of con-  
viction, it will be proper to use the form given in the \*2 Wm. IV.  
c. 4.

See title "Conviction," p. 200.

*Warrant of Distress. (Archbold.)*

County of —, } To the constable of —, in the said county, and to  
to wit. } all other constables in and for the said county.

Whereas C. D., late of —, in the said county, hawker, was on this  
day (or on the — day of — instant) duly convicted before us —  
three of her Majesty's justices of the peace for the said county, for that  
he the said C. D. (&c. *stating the offence as in the conviction*) against  
the form of the statute in that case made and provided; and we the said

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— thereupon adjudged the said C. D. for his said offence, to (&c. *setting out the adjudication as in the conviction*) ; and whereas the said C. D. being so convicted as aforesaid, and being required to pay the said sums, hath not paid the same, or any part thereof, but therein hath made default. These are therefore to command you forthwith, to make distress of the goods and chattels of the said C. D., or of the goods with which the said C. D. shall be found trading, and if within the space of — (not less than four nor more than eight days; see 27 Geo. II. c. 20, § 1) days next after the making of such distress, the said sums, together with the reasonable charges of taking and keeping the said distress, shall not be paid, that then you do sell the said goods and chattels so by you distrained, and out of the money arising by such sale, that you do pay one moiety of the said sum of — so forfeited as aforesaid, together with the said sum of — for costs, unto A. B. who hath informed us of the said offence; and the said other moiety of the said sum of — so forfeited as aforesaid, unto the use of her Majesty, rendering the overplus, on demand, unto the said C. D., the reasonable charges of taking, keeping and selling the said distress, being first deducted; and if no such distress can be found, that then you certify the same unto us, to the end that such further proceedings may be had therein, as to the law doth appertain. Given under our hands and seals, &c.

## Constable's return thereto.

County of —, } I, W. T., constable of —, in the county aforesaid,  
to wit. } do hereby certify — esquires, three of her Majesty's justices of the peace for the said county, that by virtue of this warrant I have made diligent search for the goods and chattels of the within mentioned C. D., and the goods and chattels with which the said C. D. was found trading, and that I can find no sufficient goods or chattels of the said C. D., or sufficient goods and chattels with which he was found trading as aforesaid, whereon to levy the sums within mentioned. Witness my hand the — day of —.

## Commitment for want of Distress.

County of —, } To the constable of —, in the said county, and to  
to wit. } the keeper of the gaol at —, in the said county.

Whereas C. D., late of (&c. *as in the warrant of distress, setting forth the offence as laid in the information, together with the conviction and adjudication*) ; and whereas, afterwards, on the — day of — in the year aforesaid, we the said — issued a warrant to the constable of —, commanding him to levy the said sums by distress and sale of the goods and chattels of the said C. D., and the goods and chattels with which the said C. D. was found trading; and whereas it appears to us, as well by the return of the said constable to the said warrant of distress, as otherwise, that the said constable hath made diligent search for the goods and chattels of the said C. D., and for the goods and chattels with which the said C. D. was so found trading as aforesaid, but that no sufficient distress can be found whereon to levy the same. These are therefore to command you the said constable of — aforesaid, to take the said C. D., and him safely to convey to the

gaol at — aforesaid, and there to deliver him to the keeper of the said gaol, together with this precept: and we do hereby command you the said keeper of the said gaol, to receive the said C. D. into the said gaol, there to imprison him for the space of — calendar months, and for your so doing this shall be your sufficient warrant. Given under our hands and seals, at — in the county aforesaid, this — day of — &c.

N. B.—The proceedings subsequent to the conviction, may be under the hand and seal of *one* of the justices only, for which special provision is made in the \*2 Wm. IV. c. 4.

See title "Conviction."

### HEIRS AND DEVISEES.

By 8 Vic. c. 8, § 1, all the former acts are repealed. § 2. The Governor authorised to issue commissions to the Chief Justice of the Queen's Bench, the Vice-Chancellor and the Puisne Justices of said Court of Queen's Bench, and such other persons as he shall see fit; three of whom (the Chief Justice, Vice-Chancellor, or one of the Puisne Judges being one) to be a *quorum*, with full power to determine who is the party entitled to patent: sittings to be held at Toronto on the first Monday in January and first Monday in July every year. § 3. Any party claiming lands (for which no patent has been issued) as heir, devisee or assignee of the original nominee of the crown, or claiming from or through such parties, is required to bring his claim before the commissioners, and his documents, proofs and evidence in support thereof—such evidence to be given *viva voce* before the commissioners, or by written depositions sworn before one of the commissioners, or before the judge of any circuit court, clerk of the peace, or any commissioner for receiving affidavits in the Queen's Bench. § 4. The commissioners empowered to command the attendance of witnesses, and to issue commissions for the examination of witnesses not resident in Upper Canada. § 5. No claim to be received or proceeded upon by the commissioners until claimants (or one of them, if more than one) shall have made and produced before the commissioners an affidavit in writing, signed by him, that such claim is just and well-founded to the best of his knowledge and belief, and that he is not aware of any adverse claim; or if he be aware of any adverse claim, that he has caused notice in writing of his claim and of his intention to bring the same before the said commissioners at the time when it shall be actually so brought (a copy of which notice shall be annexed to the affidavit), to be served on the party having or being supposed to have such adverse claim, at least *one month* before the date of such affidavit.

§ 6. Not the parties claimed, in the office thirty days and to be clerk of the of the cla and to aff house, an in open co the court, which cer two shilli sioners m deem exp allow such of the cas the strict l report thei to be final and patent any existi until after and if in t have reaso tained by may repor be stayed award cos Purchasers file their d brance or l if patent h ceedings b those appo oath may b false swear may make And allow clerk to the

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§ 6. Notice specifying such claim, and the name or names of the parties, together with the number of the lot (or part thereof) claimed, concession and township where situate, to be put up in the office of the clerk of the peace of the district at least thirty days before the claim is heard before the commissioners, and to be certified by the clerk of the peace accordingly; the clerk of the peace, once in every three months, to make a list of the claims so put up in his office, and the particulars thereof, and to affix such list in some conspicuous part of the court-house, and to cause such list to be publicly read and proclaimed in open court at the General Quarter Sessions, by the crier of the court, immediately after the charge to the grand jury—for which certificate the clerk of the peace shall be entitled to two shillings and six-pence, and no more. § 7. The commissioners may defer claims for further evidence, as they shall deem expedient; § 8, and after full examination, reject or allow such claims as in their judgment the justice and equity of the case may require, without regard to legal forms, or to the strict letter of the law, or legal rules of evidence, and to report their decision to the Governor in Council—such decision to be final and conclusive (except as hereinafter mentioned), and patents to issue accordingly; such patents not to affect any existing charge or incumbrance. § 9. Patent not to issue until after one calendar month from the time of such report; and if in the meantime any *quorum* of the commissioners shall have reason to believe that such decision and report were obtained by surprise, or erroneously made, then such *quorum* may report accordingly to the Governor, and the patent shall be stayed until re-hearing and further report, with power to award costs to either party, according to circumstances. § 10. Purchasers of unpatented lands sold for arrears of taxes, may file their claims for a patent. § 11. Any mortgage, incumbrance or lien on unpatented lands to have the same effect as if patent had been previously issued. § 12. Unfinished proceedings before former commissioners may be continued before those appointed under this act. § 13. Affirmation instead of oath may be made by persons allowed by law to affirm; and false swearing or affirming to be perjury. § 14. Commissioners may make and establish rules and forms of proceeding. § 15. And allow witnesses' expenses. § 16. Fees to be taken by the clerk to the commissioners as follows, viz. :—

	£	s.	d.
For filing petition, .....	0	1	0
For setting down claim to be heard, .....	0	2	6
On the hearing of any claim, .....	0	5	0
For making report thereon, .....	0	10	0

**Highways.**

For each certificate of allowance,.....	0	1	3
For copy of order respecting any claim.....	0	1	3
For each summons for a witness, .....	0	2	0
For each commission for examination of witnesses, .....	0	10	0
For any certified copy of any paper (for the certificate).....	0	1	3
And for every folio of 100 words,.....	0	0	6
And such reasonable fees for extra services as the commissioners shall allow.			

§ 17. The copy of any order, report or decision made by the commissioners, certified by the clerk and countersigned by one of the commissioners, to be evidence at law. § 18. Interpretation clause.

*Notice of Claim.*

Notice is hereby given, that A. B., of —, in the county of —, yeoman, will claim before the commissioners appointed to ascertain the heirs and devisees of original nominees of the crown to lands not under patent, at their sittings at Toronto, in the month of July next, lot number —, in the — concession of the township of —, in the county of —, (*here describe any other lot also under claim*) as eldest son and heir-at-law, (*or as assignee or devisee under the will*) of C. D. late of —, the original nominee.

*Certificate thereon.*

Office of the clerk of the peace, } I do hereby certify, that the within  
for the county of —. } written notice was put up in the  
court-house at — in the county aforesaid, on the — day of —  
last, and has remained so put up until this day: And further, that the  
said notice was proclaimed in open court at the general quarter sessions  
of the peace for the said county, held in the month of — last, at —  
aforesaid, immediately after the charge to the grand jury, pursuant  
to the statute in such case made and provided.

Dated at — aforesaid, the — day of — 18—.

G. G., *Clerk of the Peace, County of —.*

**HIGHWAYS.**

A highway is a public passage for all the king's liege subjects, for which it is denominated in legal proceedings, the king's highway.—*Deacon's C. L.* 567. A way may also become a public highway by a dedication of it by the owner of the soil to the public use; and eight years, without any impediment, has been held sufficient dedication.—11 *East.* 375.

All injuries to a highway—as by digging a ditch, or making a hedge across it, or laying logs of timber in it, or by doing any other act which renders it less commodious, are public nuisances at common law, and indictable.—1 *Haw. c.* 76, § 144. On an indictment for obstruction to a highway, the judgment of the court is usually a fine, as well as an order on the defen-

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dant to abate the nuisance ; in order to warrant a judgment for *abating* a nuisance, it must be alleged in the indictment to be continuing.—*R. v. Stead*, 8 T. R. 142.

By statute \*50 G. III. c. 1, § 12, all allowances for roads, by king's surveyors, and all roads under any act of parliament, or any roads whereon the public money has been expended, or statute labour done, or any roads passing through Indian lands, shall be deemed common and public highways, unless any have been altered according to law.

Where in the original plan of a township, a piece of ground was laid out as a highway, which was subsequently granted by the crown in fee to several individuals, and was occupied by them and others claiming from them, for upwards of thirty years, held, that an indictment for a nuisance for stopping up that piece of ground, claiming it as a highway, could not be sustained.—*Rex v. Allan*, Tr. 1 & 2 W. IV., *Cameron's Digest*, p. 40.

An indictment for obstructing a highway laid out under \*50 G. III. c. 1, cannot be supported, when the highway has not been established in the manner marked out by the statute, as when the report to the magistrates in quarter sessions by the surveyor of roads does not express the exact width of the road, nor the precise line in which it is to run ; and *semble*, in such a case, all the steps necessary to be taken before a highway can be legally established under that act, should be proved by the prosecutor to have been taken, before the defendant can be found guilty.—*Rex v. Sanderson*, Easter 3 W. IV., *Cameron's Digest*, p. 41.

By 12 V. c. 35, § 41, all allowances for roads, streets or commons in towns and villages in Upper Canada, and upon which lots of land fronting thereon have been sold to purchasers, shall be public highways.

By the General Municipal Act 12 V. c. 81, § 31, township municipalities are authorized to make by-laws for—

10. The opening, constructing, making, levelling, pitching, raising, lowering, gravelling, macadamizing, planking, repairing, planting, improving, preserving and maintaining of any new or existing highway, road, street, side-walk, crossing, alley, lane, bridge or other communication within such township, and for the stopping up, pulling down, widening, altering, changing or diverting of any such highway, road, street, side-walk, crossing, alley, lane, bridge or other communication within the same : Provided that no such alteration shall encroach upon any dwelling-house, barn, stable or outhouse, or any orchard, garden, yard or pleasure ground, without the owner's consent. 11. For providing that on each side of any highway passing through a wood, the timber shall be cut down for a space not exceeding 25 feet by the proprietor, or in case of his default, by the overseer of highways ; such

timber to be removed by the proprietor, or in case of default, by the overseer, and in such case appropriated by him for the use of the highways and bridges in his division, or sold to defray expences: orchards, shrubberies and trees planted for ornament or shelter excepted. 12. For the protection and preservation of timber, stone, sand or gravel upon any allowance or appropriation for any public road, and for sale of any timber growing thereon if thought proper by the council. 13. For regulating the driving and riding over bridges. 15. For making regulations as to pits, precipices and deep waters, or other places dangerous to travellers. 16. For granting money to the county councils, or the adjoining one, to aid in the making, opening, building, maintaining, widening or improving any highway, road, street, bridge or communication between such and any other township, or making or improving any highway, road, street, bridge or communication within such township assumed by the county council. 21. For the destroying or suppressing weeds detrimental to good husbandry.

§ 38. All roads and bridges between different townships situate in the same county, shall be exclusively within the jurisdiction, and subject to the control of the municipal council of such county, as far as respects the making, maintaining or improving the same, or the stopping up, altering or diverting the same, or the protection and preservation of timber, stone, sand or gravel thereon, or the regulating the driving or riding thereon, or other use of the same, and this notwithstanding that the line of such road or bridge may occasionally deviate from its course between such townships, and in some parts thereof may be wholly within one of such townships. § 39. Roads and bridges between different counties, or between a county and a city within the boundaries of such county, or on the bounds of a town or incorporated village within such county, shall be within the jurisdiction and control of the municipal corporation of both counties, as far as the making, maintaining or improving the same, or the stopping up, altering or diverting the same, or the protection of any timber, stone, sand or gravel thereon, or regulating the driving or riding thereon, or other use of the same, and be subject to corresponding by-laws only. § 187. It shall not be competent to the municipality of any township, or municipal council of any county, to pass any by-law for stopping up any original allowance for roads in any township or county, nor on the limits of any village, town or city therein. § 138. On the alteration of any road under the authority of this act (not being an original allowance for road, or where the same shall lie within any incorporated village, town or city, or the liberties thereof), the site of such old road shall be sold and conveyed by the municipal corporation to the party next adjoining to whose lands the same shall have run; and in case of his or her

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refusal to purchase at such price as the corporation shall think reasonable, then to any other person, but not to such other person at any *given price*, unless such price be first refused by such adjoining owner; and in case any person now in possession of any concession road or side line may have laid out streets in any city, town or village without any compensation therefor, he shall be entitled to retain the land within such city, town or village originally set apart for such concession road or side line, in lieu of the street set apart by him in place thereof.

§ 189. No road to be hereafter laid out, under this act, shall be more than ninety feet nor less than forty feet in width: this clause not to affect established roads, or when altered. § 190.

All powers, duties or liabilities vested in or belonging to the magistrates in quarter sessions, with respect to any particular highway, road or bridge in Upper Canada, shall from henceforth become vested in the municipality of the county, or if between two counties, then in the municipalities of both counties, subject to the provisions of this act as to the mode and manner of performance of such powers, duties and liabilities.

§ 191. Municipal corporations may authorize by by-law, contracts for planking, gravelling or macadamizing any road, or to build any bridge within their jurisdiction, and to grant for such work the tolls thereon, such tolls being first fixed by by-law; and such grant not to exceed *ten* years—the grantor to keep such road or bridge in repair. § 192. No by-law to be made for stopping or altering any public highway, road, street or lane, until one calendar month's notice be given by the corporation in the six most public places in the neighborhood, nor until objecting parties have been heard against the same in person by counsel or attorney. This section not to extend to any roads or bridges under the ordnance department; § 194

—nor to allow roads being run through ordnance property except by consent. § 195. In case it shall be necessary for roads to pass over private property, arbitrators to be appointed to fix compensation (if any); awards to be subject to the Court of Queen's Bench. § 196. In case of special actions, tender of amends may be pleaded. § 197. Damages to be apportioned according to the benefit the plaintiff may derive from opening such road.

#### *Joint Stock Companies.*

By 12 V. c. 84, any number of persons not less than five, may form themselves into a company or companies for the purpose of constructing in and along any public road or highway allowance for road or otherwise, any road or roads of the kind mentioned in the preamble (*viz.* sawed, hewed or split plank,

macadamized or gravelled roads, and also bridges, piers, wharves, slides and dams connected therewith), not less than two miles in length. § 2. Such intended road may be opposed by any twelve freeholders residing within half a mile of the intended line, and upon notice given by them to the president or chairman of such company, the work shall be suspended until after the next sitting of the municipal council having jurisdiction throughout the line, provided such notice be given before the work is commenced. § 3. The municipal council authorized to decide upon the matter. § 4. Companies to be composed of not less than *five* persons; § 5—with power to explore and appropriate lands. § 6. Affairs to be managed by five directors—each stockholder entitled to a vote for each share. § 7. Number of shares may be increased or money raised by loan. § 8. Shares to be £5 each, and transferable. § 9. Companies may sue for arrears. § 10. Arbitrators to be appointed to compute damages; § 11—with provision in case of absentees and lands under mortgage, &c.; § 12—also Indian lands. § 13. Provides for meetings of the arbitrators. § 14. The election of a president. § 15. The president and directors to fix the tolls to be received on any such roads: no toll to be taken until two miles of road are completed. § 16. The tolls not to exceed  $1\frac{1}{2}$ d. per mile from the gate to be passed to the last gate in the direction whence any person may have come for any vehicle drawn by two horses; and  $\frac{1}{2}$ d. per mile for every additional one. For every vehicle drawn by one horse  $1$ d. per mile; for every score of sheep or swine, and every score of neat cattle,  $\frac{1}{2}$ d. per mile; for every horse and rider or led horse  $\frac{1}{2}$ d. per mile. § 17. The company to report annually to the municipal council the amount received and expended. § 18. Shares to be forfeited if calls are not paid in 90 days after notice. § 19. Roads, &c. to be vested in the company. § 20. Power to erect toll gates: no toll to be exacted for merely crossing any road. § 21. Roads not more than five miles in length to be completed in two years after incorporation, otherwise their powers to cease.

**PENALTIES.**

§ 21. If any person shall in any way injure, cut, break down, or destroy any part of any such road, &c., he shall be guilty of misdemeanor, and punished by fine and imprisonment: any person removing any earth or materials belonging to the road, or driving any loaded vehicle between the hard road and the ditch further than necessary on passing another vehicle; or in turning off or doing any damage to the posts, rails or fences; or hauling upon the road any timber, stone or other thing, so as to drag or trail to the prejudice thereof; or leaving any wagon, &c., upon the road, without some proper person in care, longer

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than necessary to load and unload; or laying any timber, stones, rubbish, or other thing, upon such road, to the prejudice, interruption and danger of any person travelling; or suffering any stone or other thing, and in blocking any cart wagon, &c., in going up a hill or rising ground, to remain on such road; or pulling down, damaging or destroying any lamp or lamp post; or extinguishing the light of any such lamp; or pulling down or damaging any table of tolls, or defacing any of the letters, figures or marks thereon, or on any finger-post or mile-post, or throwing any rubbish into any drain, ditch, culvert or watercourse; or carrying away any stones, gravel, sand or other materials, dirt or soil, from any part of such road; or digging any holes or ditches on the allowance for the same; or forcibly passing or attempting to pass any toll gate without paying the toll; such person shall, upon conviction before any justice of the peace near the place, be sentenced to pay all the damages, and a fine of not more than 50s., nor less than 5s.; § 23—to be levied by distress and sale, and in case of no sufficient distress, offender to be committed for any period not exceeding one month. § 24. Any person evading the toll by turning out of the road and entering again beyond any toll gate, shall, for every such offence, forfeit 10s., on conviction before any one justice. § 25. Any person occupying adjoining lands suffering any person to pass through the same and evade the toll shall, for every such offence, on conviction before any one Justice, forfeit 20s.

§ 26. Municipalities authorised to take stock in any such roads; § 27—and may loan money to such companies; § 28—after 21 years municipality may purchase the stock at the current value. § 29, 30, 31, 32, relate to actions. § 33. All persons, horses or carriages attending funerals, or going to or returning from divine service on the Lord's Day, shall be free from toll. § 34. Rate of toll on intersected line of road to be limited to the part travelled upon. § 35. Companies to keep roads in repair, and in case of default may be indicted at any general quarter sessions.

See also titles "Counties," "Cities," "Police," "Incorporated Villages" and "Statute Labour."

*Indictment for digging a hole in a Street, being the Queen's Highway. C. C. C.*

County of —, } The jurors, &c. That A. F. late of, &c. yeoman, on  
to wit. } the &c. with force and arms, at the township aforesaid, in the county aforesaid, in a certain street, being the Queen's common highway there, called —, used for all the Queen's subjects, with their horses, coaches, carts and carriages, to go, return, ride, pass, repass, and labour, at their free will and pleasure, unlawfully and injuriously did dig, and cause to be dug, a certain pit, containing in circumference fifteen feet, and in depth thirteen feet; and the same pit so as aforesaid, dug and caused to be dug in the street and highway aforesaid, from the — day of —, in the year aforesaid, until the — day of the same month, in the year aforesaid, at the township aforesaid, in the county aforesaid, unlawfully and injuriously did continue; by reason whereof

the Queen's subjects, during the time aforesaid, could not go, return, pass, re-pass, ride and labour, with their horses, coaches, carts and other carriages, in, by, and through the same street and highway, as they were wont, and ought to do, without great peril and danger of their lives, to the great damage and common nuisance of all the liege subjects of our said lady the Queen, in, by, and through the same street and highway, returning, passing, re-passing, riding and labouring, and against the peace, &c.

*Indictment for stopping up a Watercourse, whereby the Highway is overflowed.*

County of —, } The jurors, for our lady the Queen, upon their oath to wit. } present, that A. O., late of the township of —, in the county aforesaid, on the — day of —, in the — year of the reign — with force and arms, at the township aforesaid, in the county aforesaid, a certain ancient watercourse adjoining to the Queen's common highway, within the same township, leading from — to —, with gravel and other materials unlawfully and injuriously did obstruct and stop up, and the said watercourse so as aforesaid obstructed and stopped up from the said — day of — in the year aforesaid, until the day of the taking of this inquisition, at the township aforesaid, in the county aforesaid, unlawfully and injuriously hath continued, and still doth continue, by reason whereof the rain and waters that were accustomed, and ought to flow and pass through the said watercourse, on the same day and year, and divers other days and times afterwards, between that day and the day of the taking of this inquisition, did overflow and remain in the Queen's common highway aforesaid, and thereby the same was, and yet is, greatly hurt and spoiled, so that the liege subjects of our said lady the Queen, through the same with their horses, wagons, carts and carriages, then and on the said other days and times could not, nor yet can, go, return, pass, ride and labour, as they ought and were accustomed to do, to the great damage and common nuisance, &c.

### HOMICIDE.

Homicide in law signifies the killing of a man by a man.—  
1 *Haw.* 66. And may be classed according to the following degrees:—

- |                              |                  |
|------------------------------|------------------|
| 1. Justifiable homicide.     | 4. Manslaughter. |
| 2. Homicide by misadventure. | 5. Murder.       |
| 3. Homicide by self defence. | 6. Self-murder.  |

#### 1. Justifiable Homicide.

To make homicide justifiable, it must be owing to some unavoidable necessity to which the person who kills another must be reduced, without any manner of fault in himself.—1 *Haw.* 69. If any evil disposed person shall attempt feloniously to rob or murder any person in any dwelling-house or highway, or feloniously attempt to break any dwelling-house in the night time,

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and shall happen in such felonious intent to be slain, the slayer shall be discharged.—24 H. VIII. c. 5. So, if rioters, or forcible enterers or detainers, stand in opposition to the justices' lawful warrant and any of them be slain, it is no felony.—*Hale's Pl. 37.* And if a man come to burn my house and I shoot out of my house, or issue out of my house and kill him; it is no felony.—*Hale's Pl. 39.* So, if a woman kill him that assaulteth to ravish her, it is no felony.—*Ib. 36.* If a person having actually committed a felony, will not suffer himself to be arrested, but stands on his own defence, or flies, so that he cannot possibly be apprehended alive by those who pursue him, whether private persons or public officers, with or without a warrant, he may be lawfully slain by them.—1 Haw. 70. So, if a felony hath actually been committed, and an officer having lawful warrant, arrest an innocent person, and such person assault the officer, the officer is not bound by law to give back, but to carry him away; and if in execution of his office, he cannot otherwise avoid it, but, in striving, kill him; it is no felony.—3 Inst. 56. Also, if a person arrested for felony break away from his conductors to gaol, they may kill him if they cannot otherwise take him. But in this case likewise there must have been a felony actually committed.—*Hale's Pl. 36, 37.* Also, if a criminal endeavouring to break the gaol assault his gaoler, he may be lawfully killed by him in the affray.—1 Haw. 71. In civil cases, although the sheriff cannot kill a man who flies the execution of a civil process, yet if he resist the arrest, the sheriff or his officers need not give back, but may kill the assailant.—*Hale's Pl. 37.* So, if in the arrest and striving together, the officer kill him, it is no felony.—*Ib. 37.* In all these cases (a) the party upon arraignment having pleaded not guilty, the special matter must be found; whereupon the party shall be dismissed without any forfeiture or pardon purchased.—*Ib. 38.*

## 2. Homicide by Misadventure.

Homicide by misadventure is where a man is doing a lawful act without intent of hurt to another, and death *casually* ensues.—*Hale's Pl. 31.* As, where a labourer being at work with a hatchet the head flies off, and kills one who stands by.—1 Haw. 73. Or where a third person whips a horse, on which a man is riding, whereupon he springs out and runs over a child, and kills him, in this case the rider is guilty of homicide by misadventure, and he who gave the blow, of

(a) Although such may be the law as laid down by ancient writers, common humanity will prompt officers to act with the greatest possible forbearance; and it must be a very extreme case of necessity that would justify homicide.

manslaughter.—1 *Haw.* 73. But if a person riding in the street whip his horse to put him into speed, and run over a child and kill him, it is homicide, and not by misadventure; and if he ride so, in a press of people with intent to do hurt, and the horse killeth another, it is murder in the rider.—1 *H. H.* 476. If a person drive his cart carelessly, and it run over a child in the street, if he have seen the child and yet drive on upon him, it is murder; but if he saw not the child, yet it is manslaughter; but if the child had run the cross way, and the cart run over him before it were possible for the carter to make a stop, it is by misadventure.—1 *H. H.* 476. So, where workmen throw stones, rubbish, or other things from a house, in the ordinary course of their business, by which a person underneath happens to be killed, if they look out and give timely warning to those below, it will be homicide by misadventure; if without such caution it will amount to manslaughter, at least, if it was a lawful act, but done in an improper manner.—*Fost.* 262, 263. If the act be unlawful it is murder; and if a person meaning to *steal* a deer, in another man's park, shoot at the deer and by the glance of the arrow killeth a boy that is hidden in a bush, this is murder; for that the act was unlawful, although he had no intent to hurt the boy, nor knew of him. But if the owner of the park had shot at his own deer, and without any ill intent had killed the boy by the glance of his arrow, this had been homicide by misadventure, and no felony.—3 *Inst.* 56. And it is a general rule in case of all felonies, that wherever a man intending to commit one felony happens to commit another, he is as much guilty as if he had intended the felony which he actually commits.—1 *Haw.* 74.

Homicide by misadventure, though not felony, yet a person guilty thereof is not bailable by justices of the peace, but must be committed to the assizes.—1 *Haw.* 75. But if he is taken only on a slight suspicion, the justices of the peace may bail him.—2 *Haw.* 305.

### 3. Homicide by Self-Defence.

Homicide in a man's own defence is, where one who hath no other possible means of preserving his life from one who combats with him, on a sudden quarrel, kills the person by whom he is reduced to such an inevitable necessity. 2. And not only he, who upon assault, retreats to a wall or some such strait, beyond which he can go no farther, before he kills the other, is judged by law to act upon unavoidable necessity; but also he, who being assaulted in such a manner and in such a place, that he cannot go back without manifestly endangering his life, kills the other without retreating at all. 3. And not-

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withstanding, a person who retreats from an assault to the wall, give the other wounds in his retreat, yet, if he give him no mortal one till he get thither, and then kill him, he is guilty of homicide *se defendendo* only.—1 *Haw.* 74. 4. But if the mortal wound was first given, then it is manslaughter.—*Hale's Pl.* 42. 5. And an officer who kills one who resists him in the execution of his office (a); and even a private person that kills one who feloniously assaults him in the highway, may justify the fact, without ever giving back at all.—1 *Haw.* 75. 6. But if a person upon malice *prepensè* strike another, and then fly to the wall, and there in his own defence kills the other, this is murder.—*Hale's Pl.* 42. A person guilty of this offence cannot be bailed by justices of the peace.—1 *Haw.* 76. But otherwise, if taken only on a slight suspicion.—2 *Haw.* 105.

## 4. Manslaughter.

By manslaughter is to be understood—1. Such killing of a man as happens on a sudden quarrel, or in the commission of an unlawful act, without any deliberate intention of doing any mischief at all.—1 *Haw.* 76. 2. The difference between murder and manslaughter is, that murder is committed upon malice *aforethought*, and manslaughter *without* malice *aforethought*, upon a sudden occasion only: as, if two meet together, and striving for the wall the one kill the other, this is manslaughter and felony; and so it is if they had upon a sudden occasion gone into a field and fought, and the one had killed the other, this had been but manslaughter, and no murder; because all that followed was but a continuance of the first sudden occasion, and the blood was never cooled till the blow was given.—3 *Inst.* 55. There can be no accessories to this offence, before the fact, because it must be done without premeditation.—1 *Haw.* 76. But there may be accessories after the fact.—3 *Inst.* 55.

The punishment for this offence, formerly, was burning in the hand and forfeiture of goods and chattels, for which punishment, that of imprisonment for a year and the imposition of a fine was afterwards substituted by the 19 G. III., c. 74.

But now, by 4 & 5 V., c. 27, § 7, it is punishable at the discretion of the court with imprisonment at hard labour in the provincial penitentiary for life, or for any term not less than seven years; or imprisonment in any other prison or place of confinement for any term not exceeding two years, or to pay such fine as the court shall award.

\* By 3 W. IV., c. 3, the offence is bailable by two justices.

(a) See note at the foot of page 355.

## 5. Murder.

Murder, is when a man of sound memory and of the age of discretion unlawfully killeth another under the king's peace, with malice aforethought, either expressed by the party or implied, by law, so as the party wounded or hurt die of the wound or hurt within a year and a day.—3 *Inst.* 47.

By *malice expressed*, is meant a deliberate intention of doing any bodily harm to another, whereunto by law a person is not authorised—1 *H. H.* 451, the evidences of which are—1. Lying in wait. 2. Menacings antecedent. 3. Former grudges. 4. Deliberate compassings and the like.—1 *H. H.* 451.

*Malice implied* is in several cases, as where one voluntarily kills another without any provocation; for in this case the law presumes it to be malicious, and that he is a public enemy of mankind. 2. Poisoning also implies malice, because it is an act of deliberation. 3. Also, when an officer is killed in the execution of his duty, it is murder, and the law implies malice.—1 *H. H.* 455, 456, 457. 4. Also where a prisoner dieth by duress of the gaoler, the law implies malice, by reason of the cruelty.—3 *Inst.* 52. 5. And in general, any formed design of doing mischief may be called malice; and therefore not such killing only as proceeds from premeditated hatred or revenge, but also such as is accompanied with those circumstances that shew the heart to be perversely wicked, is adjudged to be of *malice prepense*, and consequently murder.—2 *Haw.* 80; *Strange*, 766. No breach of a man's word or promise, no trespass either to lands or goods, no affront by bare words or gestures, however false or malicious and aggravating, will excuse him from being guilty of murder, who is so far transported thereby, as immediately to attack the person who offends him in such a manner as manifestly endangers his life, without giving him time to put himself upon his guard, if he kills him in pursuance of such an assault, whether the person slain did at all fight in his defence or not.—1 *Haw.* 82.

If two fall out upon a sudden occasion, and agree to fight in such a field, and each of them go and fetch his weapon, and the one killeth the other—this is no *malice prepense*; for the fetching of the weapon and going out into the field is but a continuance of the sudden falling out, and the blood was never cooled; but if there were deliberation—as, where they meet the *next* day—nay, though it were the same day, if there were such a competent distance of time that in common presumption they had time to deliberate—then it is murder.—3 *Inst.* 51; 1 *H. H.* 453. And the law so far abhors all duelling in cold blood, that not only the principal who actually kills the other, but also his seconds, are guilty of murder, whether they fought

or not; and as accessories.

If a physician cures or prevents the death of a person who has killed the person, the woman be the child with the woman—quick with a womb; or in the body, and she but a great die of the person. *Inst.* 50. Known when the child die after the mother, Dalton says, her delivery, Hawkins says murder, notwithstanding. *Haw.* 80. A child who pursuance of 1 *Haw.* 80. the fact to an

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or not; and the seconds of the party slain are likewise guilty, as accessories.—1 *Haw.* 82.

If a physician or surgeon give a person medicine with intent to cure or prevent a disease, and contrary to his expectation it kill the person—this is no homicide.—1 *H. H.* 429. But if a woman be with child, and any one give her a potion to destroy the child within her, and it work, and so strongly that it kills the woman—this is murder.—1 *H. H.* 430. But if a woman, quick with child, by a potion or otherwise killeth it in her womb; or if a man beat her, whereby the child dieth in her body, and she is delivered of a dead child—this is not murder, but a great misprision. If the child be born alive, and then die of the potion, battery, or other cause—this is murder.—3 *Inst.* 50. Lord Hale says, that in this case it cannot be legally known whether the child were killed or not; and that if the child die after it is born and baptised, of the stroke given to the mother, yet it is not homicide.—1 *H. H.* 433. And Mr. Dalton says, whether it die within her body, or shortly after her delivery, it maketh no difference.—*Dalt.* 330. But Mr. Hawkins says, that (in the latter case) it seems clearly to be murder, notwithstanding some opinions to the contrary.—1 *Haw.* 80. And if a person counsel or advise a woman to kill her child when it shall be born, and she afterwards kill it in pursuance of such advice, he is an accessory to the murder.—1 *Haw.* 80. And by \*3 *W. IV. c. 4, § 12*, accessories before the fact to any capital offence shall suffer death.

They that are present when any man is slain, and do not their best endeavour to apprehend the murderer or manslayer, shall be fined and imprisoned.—3 *Inst.* 53.

By 4 & 5 *V. c. 27, § 4*, sentence of death may be pronounced after conviction for murder in the same manner, and the court before which the conviction may be had shall have the same power, in all respects, as after convictions for other capital offences. § 6. And where any person being feloniously stricken, poisoned or otherwise hurt, upon the sea, or at any place out of this province, shall die thereof in this province, or being feloniously stricken, &c. in this province, shall die thereof out of this province, every such offence, whether murder or manslaughter, or being accessory before or after the fact, may be tried and punished in the district, county or place in this province in which such death, stroke, poisoning or hurt shall happen.

See also title "Execution."

#### 6. Self-murder.

A *felo-de-se*, or felon of himself, is a person who, being of sound mind, and of the age of discretion, voluntarily killeth

himself.—3 *Inst.* 54; 1 *H. H.* 411. The offender herein incurs a forfeiture of goods and chattels, but not of lands; for no man can forfeit his land without an attainder by course of law.—3 *Inst.* 54. He shall also be buried ignominiously in the highway, with a stake driven through his body.—4 *Bl.* 190.

*Commitment for Murder. (Archbold.)*

County of —, } J. P. Esquire, one of her Majesty's justices of the  
to wit. } peace for the said county, to the constable of —,  
in the said county, and to the keeper of the common gaol at —, in  
the said county:

These are to command you, the said constable, in her Majesty's name, forthwith to convey and deliver into the custody of the said keeper of the said common gaol, the body of A. B., charged this day before me, the said justice, on the oath of C. D. of —, and others, for that he the said A. B., on the — day of —, in the year of our Lord —, at — in the said county, feloniously, wilfully, and of his malice aforethought, did kill and murder one E. F. by stabbing him the said E. F. with a knife, in and upon the left side of the belly, and on other parts of the body of him the said E. F., thereby giving him divers mortal wounds, of which said mortal wounds the said E. F. instantly died: And you the said keeper are hereby required to receive the said A. B. into your custody in the same common gaol, and him there safely to keep, until he shall be thence delivered by due course of law.

Given under my hand and seal, the — day of — 18 —.

J. P.

*Of a Woman, for the Murder of her Bastard Child.*

[Commencement as before] on the — day of —, in the year of our Lord —, at the township of — in the said county, feloniously, wilfully, and of her malice aforethought, did kill and murder a certain male bastard child, which she had then lately before brought forth, by choking and strangling the same; of which said choking and strangling he the said male bastard child instantly died: And you the keeper, &c. [as before.]

**HORSES.**

The stealing of a horse is felony at common law, and by the 4 & 5 V., c. 25, § 29, is punishable at the discretion of the court by imprisonment at hard labour in the provincial penitentiary for any term not exceeding fourteen years nor less than (a) seven years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years.

By 2 & 3 P. & M., c. 7, and 31 E., c. 12, the keeper of every fair and market shall yearly appoint a certain special and open place where horses shall be sold in any fair or market overt; § 2, and shall appoint one or more persons to take toll there, and to keep the same place from ten in the forenoon till sunset. § 3. And the sale or exchange, in any fair or market overt, of

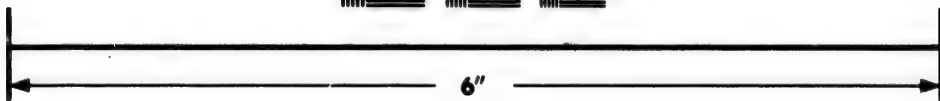
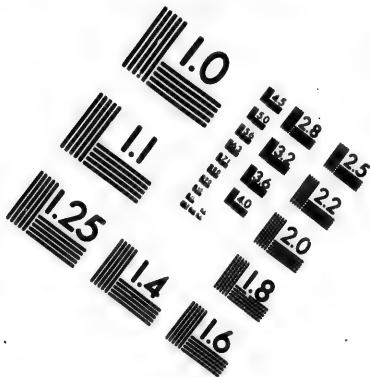
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any stolen horse shall not alter the property, unless the same shall be in the time of the said fair or market openly ridden, led, walked, driven, or kept standing, for one hour together at least, between ten of the clock and sunset, in the open place of the fair or market wherein horses are commonly used to be sold, and not within any house, backside, or other privy or secret place. § 4. Nor unless all the parties to the bargain shall come together, and bring the horse to the open place appointed for the toll-taker, or for the book-keeper, where no toll is due. § 5. Nor unless such toll-taker, or (*where no toll is paid*) the book-keeper, or chief officer of the fair or market, shall take upon him perfect knowledge of the seller, and of his true christian name and surname and place of abode; and shall enter all the same down in a book to be kept for that purpose, or else that the seller shall bring to the toll-taker, or other officer aforesaid, one credible person that shall testify that he knoweth the seller, and his true name, surname, mystery and dwelling place, of him that so avoucheth his knowledge. § 6. Nor unless he also cause to be entered the true price. § 7. And also the colour, and one special mark at least. § 8. And the buyer shall pay the toll, if any is due, if not, then *1d.* for the entry. § 9. Which done, the person entering the same shall give to the buyer, requiring, and paying *2d.* for the same, a note in writing of all the contents of such entry, subscribed with his hand. § 10. Every person offending in any of the premises shall forfeit *£5*; half to the king and half to him that shall sue before the justices in sessions, or in any ordinary court of record; and the sale shall be void; and the owner may seize and take his horse again, or have an action.

And if any horse shall be stolen, and shall afterwards be sold in open market, and the sale shall be in conformity with the above provisions, yet, nevertheless, such sale, in six months after the felony done, shall not take away the owner's property, so as claim be made in six months, where the horse shall be found, before the mayor, if in a town corporate, or else before a justice near the place where found, and so that proof be made before such magistrate in forty days next ensuing, by two witnesses, that the property in such horse was in the party claiming, and was stolen from him within six months next before such claim; but the party from whom the same was stolen may at all times after, notwithstanding such sale, take again the said horse, on payment, or readiness to offer, to the party who hath possession, so much as he shall swear, before such magistrate, that he paid for the same.

Where a horse was stolen from the plaintiff and bought by the defendant at public auction, but not in *market overt*, and



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WEBSTER, N.Y. 14580  
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the plaintiff afterwards seeing the horse took possession of it, and the defendant immediately retook it; held that the plaintiff had a right to retake it.—*Bowman vs. Yielding*, Michs 3 V., *Cameron's Digest*, p. 82.

*Warrant to apprehend a Horse Stealer.*

County of ——— } To ——— constable of ——— in the county of ———  
to wit.

Forasmuch as A. B. of ——— in the said county, yeoman, hath this day made information and complaint upon oath before me, J. C., Esquire, one of her Majesty's justices, &c., that yesterday, in the night, a bay mare, the property of him the said A. B. was feloniously stolen, taken, and carried away, from and out of the grounds of him the said A. B. at ——— aforesaid, and that he hath just cause to suspect, and doth suspect, that C. D. late of ———, labourer, did feloniously steal, take, and carry away, the said mare: these are therefore to command you forthwith to apprehend him, the said C. D., and bring him before me, to answer to the said information and complaint, and to be further dealt with according to law. Herein fail you not.

Given under my hand and seal, this ——— day of ———.

**HOUSE OF CORRECTION.**

\* By the 50 G. III., c. 5, it is enacted, that until houses of correction shall be erected, the common gaol in each of the districts shall be a house of correction: and that all idle and disorderly persons, rogues, vagabonds, and incorrigible rogues, or any persons by law subject to be committed to a house of correction, shall be committed to the said common gaols; any law or usage to the contrary notwithstanding.

By 12 V. c. 81, § 41, the municipality of each county is authorized to make by-laws for the erection, preservation, improvement or repair of a shire hall, court-house, gaol, house of correction, &c.

§ 68. The gaol, court-house, and house of correction of the county within the limits or on the borders of which every such town shall be situate, shall be and continue to be the gaol, court-house and house of correction of such town, as well as of such county; and the sheriff, gaoler and keeper of such county gaol and house of correction, shall be bound to receive and safely keep until duly discharged, all persons committed thereto by any competent power or authority of such town.

**HOUSE OF INDUSTRY.**

\* By stat. 7 W. IV., c. 24, § 1, it is enacted that at the court of general quarter sessions in each district, after the presentment of three successive grand juries recommending the same, it shall be the duty of the justices of the said district to procure plans and estimates for the erection of suitable buildings for the reception and employment of the poor and indigent, and of

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the idle and dissolute, and to procure or purchase a suitable site whereon to erect the same, and to contract for the erection thereof, provided the expense shall not exceed £1000; and also to appoint five inspectors, who shall have the inspection and government of the said house, with full power to appoint a master, mistress, and needful assistants for the immediate care and oversight of the persons received into or employed in that house; which inspectors, once every month, and at such other times as occasions may require, shall meet for the purpose of determining the best method of discharging the duties of their office, and at such meetings shall have power to make orders and regulations for the government of said house, and to alter the same from time to time as expedient, and all such by-laws for the ordering and regulating the said house, and the affairs thereof, as may be necessary, the same not being repugnant to the laws of the land. § 3. Any two justices, or inspectors, may commit to such house by writing under their hands and seals, to be employed and governed according to the rules, regulations and orders of said house, any person or persons residing in the district, declared liable by this act to be sent thither. § 4. The persons so liable shall be poor and indigent persons, incapable of supporting themselves; all persons able of body to work and without any means of maintaining themselves, who refuse or neglect so to do; all persons living a lewd, dissolute, vagrant life, or exercising no ordinary calling or lawful business, sufficient to gain or procure an honest living; all such as spend their time and property in public houses, to the neglect of their lawful calling. § 5. Inspectors to keep an account of the charges of erecting, keeping, upholding and maintaining such house, together with an account of all materials found and furnished, and the names of the persons received into such house, as well as of those discharged therefrom, and of the earnings; one copy of which shall be presented to the justices of the peace of each district once in every year, or oftener when required by such justices in general quarter sessions assembled, and one copy to each branch of the legislature. § 6. All persons so committed, if fit and able, shall be kept diligently employed in labour during his or her continuance there; and in case the person so committed shall be idle, and not perform such reasonable task or labour as shall be assigned, or shall be stubborn, disobedient or disorderly, he, she, or they shall be punished according to the rules and regulations made for governing and punishing persons there committed.

By 12 V. c. 80, so much of the 1 § of the 7 W. IV. c. 84, as vests any powers granted thereby in the grand juries or magistrates in quarter sessions, or limits the expenditure, and the whole of the 2 § of the said act is repealed.

By 12 V. c. 31, § 41, the municipal council of the county is empowered to make by-laws for the erection, preservation, improvement or repair of a house of industry, and for the appointment of inspectors of the same, and other officers, and

For the appointment of the inspectors of the county house of industry, and of such and so many officers as may be necessary for carrying into effect any of the provisions of this act, or of any other act of the legislature of the late province of Upper Canada, the erection or maintenance of such houses of industry, or of any by-law or by-laws of the municipal council of such county respecting the same.

### ILLEGITIMATE CHILDREN.

By 7 W. IV. c. 8, § 9, any person who shall furnish food, clothing, lodging or other necessities, to any child who shall be born after the passing of this act not in lawful wedlock, shall be entitled to maintain an action for the value thereof against the father of such illegitimate child; provided such illegitimate child shall have been a minor at the time of such necessities found, and shall not have been then residing with his or her reputed father, and maintained by him as a member of his family; and provided also, that where the person suing for the value of such necessities shall be the mother of such child, or any person to whom the mother has become accountable for such necessities, then the fact of the defendant being the father of such child must be proved by other testimony than that of the mother: and provided also, that no action shall be sustained under this act unless it shall be shown upon the trial thereof, that while the mother of such child was pregnant, or within six months after the birth of her child, she did voluntarily make an affidavit in writing, before some one of his Majesty's justices of the peace for the district in which she shall be residing, declaring that the person who may be afterwards charged in such action is really the father of such child; and unless she has deposited such affidavit, within the time aforesaid, in the office of the clerk of the peace, there to remain filed.

### INDECENCY.

All open and gross indecency is a *misdemeanor* at common law, and is indictable, not only as a nuisance to the rest of the community, but as being injurious to public morals.—§ 700; 4 Bl. Com. 65. It is an indictable offence for a man to undress himself on the beach and bathe himself near inhabited houses.—*R. v. Crumdon*, 2 Comp. 80. This offence is punishable by fine or imprisonment, or both.

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*Indictment against a man, for publicly exposing his naked person.*  
(Archbold.)

County of —, The jurors for our lady the Queen upon their oath to wit, present, that J. S. late of the township of —, in the county of —, labourer, being a scandalous and evil disposed person, and devising, contriving and intending the morals of divers liege subjects of our lady the Queen to debauch and corrupt, on the — day of —, in the — year of the reign of our sovereign lady Victoria, at the township aforesaid, in the county aforesaid, on a certain public and common highway there situate, in the presence of divers liege subjects of our said lady the Queen then and there being, and within sight and view of divers other liege subjects, through and on the said highway then and there passing and re-passing, unlawfully, wickedly and scandalously did expose to the view of the said persons so present and re-passing and re-passing as aforesaid, the body and person of him the said J. S. naked and uncovered, for a long space of time, to wit, for the space of one hour, to the great scandal of the said liege subjects of our said lady the Queen, to the manifest corruption of their morals, in contempt of our said lady the Queen and her laws, to the evil example of all others in the like case offending, and against the peace of our lady the Queen, her crown and dignity.

INDIANS.

By imperial statute 43 G. III. c. 138, all offences committed within any of the Indian territories, not within the limits of this province, or of the United States, shall be tried in the same manner, and subject to the same punishment as if the same had been committed within this province.

\*By 4 G. IV. c. 20, if any person shall buy or receive from any Indian, or employ any Indian to catch any salmon during certain prohibited periods (viz. between the 10th November and the 1st January), he shall, upon conviction before any two justices, upon the oath of one witness, be subject to the penalties of the \*2 G. IV. c. 10.

\*By 3 Vic. c. 13, § 1, it shall not be lawful for any persons to sell, barter, exchange or give to any Indian man, woman or child, within this province, any kind of spirituous liquors in any manner or way, or to cause or procure the same to be done for any purpose whatever; (§ 2) under a penalty not exceeding £20, to be recovered before any one justice upon the testimony of one or more credible witnesses, one moiety to be paid to the informer and the other moiety to be collected in the same manner as fines and penalties collected under the act for the summary punishment of petty trespasses, and to be applied for the improvement of the roads through the section of the country where the offence is committed. No penalty to be incurred by the furnishing to any Indian any spirituous liquor by or under the direction of a medical man, in case of sickness.

## INDIAN LANDS.

By 23 Vic. c. 15, reciting, whereas the lands appropriated for the residence of certain Indian tribes in this province, as well as the unsurveyed lands, and lands of the crown ungranted and not under location; or sold or held by virtue of any lease or license of occupation, have from time to time been taken possession of by persons having no lawful right or authority so to do, and whereas the said lands have also been from time to time unlawfully entered upon, and the timber, trees, stone and soil removed therefrom, and other injuries committed thereon, and whereas it is necessary to provide by law for the summary removal of persons unlawfully occupying the said lands, as also to protect the same from future trespass and injury; be it therefore enacted, that it shall be lawful for the Lieutenant Governor, &c. from time to time to appoint two or more commissioners under the great seal of the province, to receive information and inquire into any complaint that may be made to them against any person illegally possessing himself of any of the aforesaid lands, for the cession of which to her Majesty no agreement hath been made with the tribes occupying the same and who may claim title thereto, and also to inquire into any complaint against any person for having unlawfully cut down or removed any timber, trees, stone or soil on such lands, or for having done any other wilful and unlawful injury thereon.

§ 2. If commissioners find upon investigation any person is unlawfully in possession, it shall be lawful for them to give notice to such person to remove from the occupation of such lands within thirty days, and in case of neglect, the commissioners or any one of them may issue a warrant directed to the sheriff, commanding him to eject the person named in such warrant.

§ 3. And if any person after removal shall return and unlawfully resume the occupation thereof, the commissioners or any one of them, upon complaint and proof, may order such person to be committed to the common gaol for a term not exceeding thirty days, and pay a fine to her Majesty not exceeding £20.

§ 4. Any person unlawfully cutting down or removing any timber or trees, or quarrying or removing stone or other materials from the lands aforesaid, shall be liable to pay a fine not exceeding £20, and in default be committed for a period not exceeding three months.

§ 5. Commissioners may order timber cut down or stone quarried, but not removed, to be seized and sold according to instructions from the Lieutenant Governor.

§ 6. May summon witnesses.

§ 7. Monies and fines collected under this act to be paid to the Receiver General for the benefit of the Indians.

§ 8. The accused party

to be first summoned. § 9. Sheriffs and gaolers bound to execute commissioners' warrants. § 10. Commissioners entitled to the same protection as justices of the peace. § 11. Appeal to the Vice-Chancellor.

## INDICTMENT.

The venue must appear in the margin and be laid in the district where the offence was committed. The exceptions to this rule are provided for by the 4 & 5 Vic. c. 24, § 40, which enacts that where any felony or misdemeanor shall be committed on the boundary or boundaries of two or more districts or counties, or within the distance of five hundred yards of any such boundary or boundaries, or shall be begun in one district or county and completed in another, the same may be tried in any of the said districts or counties, as if wholly committed therein. § 41. Offences committed on any person or in respect of any property in or upon any coach, wagon, cart or other carriage employed in any journey, or on board any vessel employed in any voyage or journey upon any navigable river, canal or inland navigation, may be prosecuted in any district or county which shall have been passed in the course of such journey or voyage; and where the side, centre or other part of any such river, canal or navigation shall constitute the boundary of any two districts or counties, such prosecution may be had in either of such districts or counties.

Every indictment must have a precise and sufficient certainty, otherwise the defendant may demur, move in arrest of judgment, or bring a writ of error.—*R. v. Mason*, 2 T. R. 581. It should state the facts, circumstances and intent with which the act is committed, with the time and place, without any repugnancy or uncertainty, and in terms direct and positive. No part of the indictment must contain any abbreviation, or express any number or date in figures.—2 *Hals*, 170; 4 *G. II. c. 26*; 6 *G. II. c. 6*. The only exception is in cases of forgery, libel and sending a threatening letter, in either of these cases a facsimile of the instrument must be set out, with all the figures and abbreviations, as in the original instrument.—*R. v. Mason*, 1 *East*, 180. The christian and surname of the defendant must be stated, with his addition, state and degree, and the place where he is known. If it be doubtful which of two names is his real surname, he may be described with an *alias dictus* as *George Jackson*, otherwise called *George Johnson*. Where the prisoner's name is not known and he refuses to discover it, he may then be described as a person whose name is to the jurors unknown, but who is personally brought before the jurors by the keeper of the prisoner.—*Russ. & Ry.* 489. The addi-



tion should be given after the first name, and not after the *alias dictus*.—2 Inst. 699; though this defect is cured by the defendant pleading to the indictment.—1 Leach, 420.

In indictments for felony, if the property be stolen out of the possession of a *bailee*, it may be described as the property either of the bailor or bailee.—2 Hale, 181; therefore goods entrusted to a carrier, a tailor or a laundress, may be laid as the property of the person to whom they are so entrusted or of the real owner, at the option of the prosecutor.—2 Hale, 181; 1 Leach, 356.

Clothes or other necessities furnished by a father to his child may be laid to be the property of the father, if the child be of tender age.—2 East. P. C. 654; but where the child is old enough to acquire property, they must then be laid to be the property of the child; where the goods are stolen from a married woman they must be laid to be the property of her husband; the goods of a deceased person must be laid as the property of his executor or administrator; of a corporation, as the property of the corporation in their corporate use.—2 East. P. C. 1059.

And by 4 & 5 Vic. ch. 24, § 43, in indictments it shall be sufficient to state partnership property to belong to one or more of the partners. § 43. And with respect to any church or place of religious worship, bridge or other public building, canal, &c. or any subdivision thereof, it shall not be necessary to state the same as the property of any person. § 44. Property under turnpike trusts may be laid as the property of the trustees or commissioners, without naming them.

By 4 & 5 Vic. c. 25, § 68, offenders may be indicted where the property shall be found, although stolen elsewhere, and so with regard to receivers.

Where the party injured is unknown or does not come forward, he may be described as "a certain person to the jurors unknown,"—2 Hale, 181; but if it appear in evidence that his name is known, the defendant will be acquitted.—2 East. P. C. 661, 781.

The time stated should be a day certain, that is, the day of the month and year upon which the act is alleged to have been committed; the year of the king's reign is usually stated; but the year of our Lord is equally good. A mistake in the day and year will not in general vitiate the indictment.—1 Salk. 287; but upon some occasions the time is material, as in the case of murder, when the indictment must lay the time of the death within a year and a day after the mortal stroke.—Fost. 349; Bl. Com. 306. So in an indictment for bigamy, it is necessary to state, with correctness, the time of the second marriage and to aver that the first wife was alive at the time; the date of



all written instruments must likewise be truly stated, the place at which the alleged offence was committed must also be stated; but though the place should be laid with certainty in statement, it is not necessary to be laid according to the truth, and a variance in this respect will not be material, provided the place proved be within the district, except where the place stated is matter of local description, as in describing the situation of a house in the case of *burglary* or *arson*.

An indictment for stopping up the king's highway must shew what particular part was stopped up.—*Show*. 389. In larceny of written instruments it is sufficient to describe them in a general manner, as "one bank note for the payment of £5, and of the value of £5."—2 *East*. P. C. 602, 777. And in an indictment for embezzling several bank notes, it is sufficient to describe them as "nine bank notes, for the payment of divers sums of money, amounting in the whole to £9," without specifying the amount of each particular note.—*R. v. Johnson*, 3 M. & S. 589.

With respect to personal chattels, they must be described with certainty and by the names usually appropriated to them, and the number and value of each species or kinds of goods, as "one watch of the value of 20s., or one sheep of the price of 20s.," if "twenty wethers and ewes" were stated the indictment would be bad for uncertainty, as it should specify how many of each.—2 *Hale*, 182, 183. Where any live animal is mentioned in an indictment, and it turns out to have been dead when stolen, the defendant must be acquitted.—*R. v. Holloway*, 1 C. & P. 126; *R. v. Edwards*, R. & R. 497. Money is described as so many pieces of the current gold or silver coin, of the value called sovereigns or shillings, as the case may be. A variance in the number of articles or in their value is immaterial, if the value proved be sufficient to constitute the offence in law; so if there be ten different species of goods enumerated, and the prosecutor prove a larceny of any one or more of a sufficient value, it will support the indictment, though he fail in his proof of the rest.

The indictment is bad for uncertainty, if it charge the defendant in the disjunctive with one or the other of two offences—as that he murdered, or caused to be murdered; that he forged, or caused to be forged.—2 *Haw*. c. 25, § 58. Or if it charge him in the disjunctive—as that, being the servant or deputy of A. B., he embezzled certain property.—2 *Rd. Rep.* 263.

The indictment must not in any one count charge the defendant with having committed two or more offences; but it seems that a defendant may be indicted for the battery of two or more persons in the same count, if committed at the same time.—2

**Burr. 994.** The court will in general, upon application, quash an indictment for duplicity; but it seems doubtful whether it can be taken advantage of in arrest of judgment, or by writ of error.

Where one part of the indictment is repugnant to another, the whole is void—as, when the indictment charges the prisoner with forging a bond, by which J. S. was *bound*; for this fact would be impossible, if the instrument were *forged*.—2 *Hag. c. 25*, § 62.

But in all cases where any fact or circumstance is stated in an indictment, which is not a necessary ingredient in the offence, it may be rejected as surplusage, and need not be proved; and if there be any defect in the mode of stating such matter, it will not vitiate the indictment.—4 *Co. 41 a*; 5 *Co. 121*; *R. v. Howarthe*, 3 *Str. 26*.

All indictments for offences at common law must conclude, “against the peace of our said lady the Queen,” [or the late king,] as the case may be; and an indictment for an offence at common law concluding “against the *form of the statute*,” would be bad.

Where a statute creates an offence, or makes an offence at common law one of a higher nature—as where a misdemeanor is made felony—the indictment must conclude “against the form of the statute.”

Where several persons actually join in the commission of the same felony, they may be indicted either *jointly* or *separately*.—2 *Hale*, 173. But where the offence is in its nature several and distinct, each defendant must then be indicted separately.

The consequence of a misjoinder of several defendants is, that application may be made to the court to quash the indictment.—*R. v. Kingston*, 8 *East*. 41.

The same defendant, also, ought not to be charged with different felonies, in different counts of an indictment—as a *murder* in one count, and a *simple larceny* in another; or a burglary in the house of A. in one count, and a burglary in the house of B. in another. In the first case, the objection is fatal on arrest of judgment, or in error, because the judgment is different for the two offences. In the last case, if the objection is made before the defendant has pleaded, or the jury are charged, the judge may in his discretion quash the indictment; and though it be not made till after the jury are charged, the prosecutor may still be put to his election for which offence he will proceed. But this last misjoinder is no ground to arrest the judgment, the offence being of the same species, and for which the judgment is precisely the same.

The same felony, however, may be charged in different ways in several counts, in order to meet the facts of the case as they may come out in evidence—thus: if it be doubtful whether the house in which a burglary is committed belongs to A. or B., it may be stated in one count to be the house of A., and in another count the house of B.; and the like in an indictment for a larceny of goods, where it is doubtful whose property they are.—2 B. & P. 508.

In misdemeanors, it is no objection to an indictment, that it contains several charges, provided the judgment is the same.—3 T. R. 98, 106; 8 East. 46; 2 Burr. 984; R. v. Jones, 2 Camp. 131.

By the 4 & 5 V. c. 24, § 42, no indictment shall abate by reason of any dilatory plea, but may be amended instantly. § 46. Indictments not to be vitiated after verdict, or otherwise, for omission of the words "as appears by the record," or of the words "with force and arms," "against the peace," nor for the insertion of the words "against the form of the statute," instead of "statutes," or vice versa: nor for the wrong designation of any party mentioned in the indictment; nor for omitting to state the time when offence committed, in any case where the time is not of the essence of the offence, nor for stating the time imperfectly; nor for stating the offence to have been committed on a day subsequent to the finding of the indictment, or on an impossible day, nor for defect in venue, § 47, nor for any defect in the anterior proceedings.

And by the 12 V. c. 21, § 1, in an indictment for stealing, a count may be inserted for receiving, and vice versa; and the prosecutor shall not be put to his election, but the jury may find a verdict on either count; and if an indictment be preferred against two or more persons, the jury may find all or any of such persons guilty, either of stealing or of receiving; or find one or more guilty of stealing, and the other or others of receiving. § 2. The Court of Queen's Bench, or of Oyer and Terminer and General Gaol Delivery, may cause an indictment to be amended in respect of any variance between any written or printed matter produced in evidence, and the recital thereof in the indictment.

See also 10 & 11 V. c. 9, § 19—subject, *Forgery*; 12 V. c. 20, § 3—subject, *Arsen*.

### Of the Finding by the Grand Jury.

The names of all the witnesses who are to be examined before the grand jury, should be indorsed on the bill of indictment, and the witnesses must be previously sworn by the officers of the court. The evidence is gone through by the grand jury

in the order in which the names of the witnesses appear on the back of the bill; and if a majority of the grand jury, consisting of twelve at the least, agree in thinking there is sufficient evidence to put the defendant on his trial, they endorse on the bill of indictment "*a true bill*"; but if the majority think there is not sufficient evidence, or if the majority (if a number less than twelve) should even think there is, then the words "*no bill*" are endorsed. The bill of indictment is then returned publicly into court by the foreman of the grand jury; and if the indictment is found (for it is previously in law only termed a bill), the prisoner is arraigned in due course and put upon his trial.

The grand jury may insist upon the same strictness of proof as is required on the trial, though it is not usual to do so, nor to weigh the evidence with that degree of scrutiny with which it is afterwards sifted by the judge and jury. They are to hear evidence only on behalf of the prosecution; for the finding of an indictment is merely in the nature of an inquiry or accusation, which is afterwards to be tried and determined; and their duty in this respect, is solely to enquire upon their oaths, whether there be sufficient cause to call upon the party to answer it; they are therefore not to try the prisoner, but merely to determine whether the evidence against him is of such a nature as to render necessary a more formal investigation into the fact of his innocence or his guilt; but they ought, nevertheless, to be thoroughly persuaded of the truth of the indictment, as far as their evidence goes, and not to rest satisfied merely with remote probabilities; a doctrine that Blackstone rightly observes might be applied to very oppressive purposes. — 4 Bl. Com. 303.

Where there is only one count in the indictment, the grand jury cannot find "*a true bill*" as to part, and "*not a true bill*" as to the other part; for they ought to find the whole or nothing. — 1 Haw. c. 64, § 40; 3 Id. c. 23, § 2. But where the indictment contains two counts, as one for a riot, and one for an assault; they may then return "*a true bill*" as to one count, and *ignoramus* as to the other. — R. v. Fieldhouse, *Cotop.* 325. But where the evidence bears upon all the counts, and the offence is only stated in a *different form*, it is better to find the whole bill, than to elect one count and ignore the others, since it is possible that the prosecution upon trial might fail upon the one so elected, and might have succeeded upon one of those ignored. When a bill is thrown out by the grand jury, it cannot again be preferred to the same jury during the same assizes or sessions; but it may be preferred at the next assizes or sessions, if the prosecutor is not prevented by any lapse of time

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limited for the prosecution. It is improper to prefer two bills at the same time for the same offence, before the grand jury, that is to say, one bill treating the offence as a felony, and the other as a misdemeanor: but after a bill for felony has been returned "*no bill*" by the grand jury, it would not be improper, if the facts warranted such a course, to prefer another bill before the same grand jury, for a misdemeanor; as for instance, if a bill of indictment be preferred for rape, and *ignored*, another may very properly, and perhaps successfully, be preferred for the misdemeanor, viz., an assault with intent to commit a rape.

### *Of granting a copy of the Indictment.*

In cases of high treason, the prisoner is, by virtue of the 7 Anne c. 21, entitled to a copy of the indictment, with a list of the witnesses and jurors, ten days before the trial.

In cases of *felony*, a copy of the indictment is never granted without the permission of the court.—*Order of the Judges*, 16 Car. 2.

In prosecutions for *misdemeanor*, the defendant is entitled to a copy of the record, as a matter of right, without any previous application to the court.—1 Bl. 385, *Selv. N. P.* 952. So in the case of a conviction by a magistrate.

### INDIGENT DEBTORS.

\*By 11 G. IV. c. 4, it is enacted, that it shall not be lawful for the sheriff or other officer to seize in execution the necessary wearing apparel of the debtor or debtors, or his, her or their family; nor the bed or bedding in actual use by the family.

### INDUSTRIAL FARMS.

By 12 V. c. 81, § 139, the municipal corporation of any town or city is authorized to purchase and hold landed property beyond the limits of such municipality, for the purpose of an industrial farm for such town or city; which farm, with all the buildings, &c., shall, with regard to jurisdiction only, be deemed and taken to be within such limits and jurisdiction. § 140. And the mayor, recorder, police magistrate, or any two aldermen or justices of the peace for only such town or city, may commit to hard labour at, or send to such industrial farm, under such regulations as shall be established, any description of persons as may, by the by-laws of such town or city, be declared expedient or necessary.

### INFANT.

An infant (or minor) in law, is any one who is under the age of 21 years. But with respect to criminal offences, the

law considers the age of 14 years the age of discretion, and that any one above that age has a sufficient knowledge of right and wrong to be criminally answerable for his actions. An infant under 14, is presumed by law to be incapable of committing a rape.—1 *Wale*, 630. With respect to the competency of an infant to be a witness, the old rule was, that none could be admitted under 9 years of age; but a more reasonable rule has since been adopted; and it is now settled that their admissibility depends on the understanding of the child, and the notion it has of the danger and impiety of falsehood, and that this must be collected from the child's answers to questions propounded by the court.—1 *East. P. C.* 442; 1 *Wale*, 302.

### INFORMATION.

An information, in its confined sense, is a complaint exhibited before one or more justices of the peace, upon oath or otherwise, which the defendant is summoned to answer, or upon which a warrant issues to apprehend him: in its more enlarged and comprehensive sense, it is an accusation or complaint exhibited against a person for some criminal offence, either against the king or against a private person, which, from its enormity, the public good requires to be immediately restrained; and it differs only from an indictment in this particular, viz., that the latter is an accusation founded on the oath of twelve men, whereas, an information is only an allegation of the officer who exhibits it.

Informations at the suit of the king are filed by the attorney general, *ex-officio*, and without any previous application to the court for a rule to file the same, and these are properly the king's own suits. But in those at the relation of private persons, the king is only the nominal prosecutor, and none such could be filed without a rule on the person complained of, to shew cause to the contrary; which rule is never granted but upon motion made in open court, and an affidavit of the facts in relation to the charge of complaint.

Compounding informations, on penal statutes, is an offence punishable by 18 Eliz. c. 5, which enacts, that any person informing under pretence of any penal law, who shall make any composition without leave of the court, or take any money or promise from the defendant to excuse him, shall forfeit £10, and shall stand two hours in the pillory, and be disabled in future to sue on any popular or penal statute.—2 *Haw. P. C.* c. 26.

Whenever a statute requires that an information taken by a magistrate should be in writing, such direction must be complied with, but otherwise it is not absolutely necessary, nor is

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it required to be on oath, unless the statute enjoins it; but in general it is advisable that the information be taken in writing, and upon oath. As the information is the foundation of all subsequent proceedings, it must set forth the day and year on which it was taken, and place where; the name and style of the justice or justices before whom taken; and finally the charge distinctly, and the time when the offence was committed, if it can be ascertained. If there are several offenders, each must be named.—3 *T. R.* 508.

If the information forms a complete foundation for the subsequent judgment, no evidence can be received to extend or supply a defective charge, as the defendant can only be convicted of the charge in the information—*Doug.* 232; therefore the want of regular allegations in an information cannot be supplied by evidence.

In information before justices, on any penal statute, the defendant need not appear in person, but may entrust his defence to another.—1 *Str.* 15.

An information must contain the charge direct, as specified in the act of parliament, and not merely facts amounting only to a presumption of guilt.—10 *Mod.* 155. But an information taken before magistrates need not be more particular than an information filed in the Court of King's Bench.—*T. R.* 356.

When justices of the peace act uprightly, though they mistake the law, the court will not grant an information against them—1 *T. R.* 653; but the party will be left to the ordinary remedy by indictment or action; nor for an improper conviction, unless the party complaining make an exculpatory affidavit, denying the charge.—3 *T. R.* 388.

Information will be granted against a justice, as well for granting as for refusing an ale license, improperly—1 *T. R.* 692. And for convicting a person without a previous summons—*Str.* 677.

A criminal information may be moved for against magistrates, for misconduct in their office, in the second term after offence committed, there being no assize intervening—13 *E. R.* 270; but, the application must be made sufficiently early in the second term to give the defendants an opportunity of shewing cause against it in the same term.—13 *E.* 322. And the court will grant a rule nisi for a criminal information against a justice, for malpractices *during the term*; but not for misconduct before the term.—7 *T. R.* 80.

The following is the form of an information, at the suit of an informer, where he is entitled to a portion of the penalty, only; or, as it is usually termed, an

## Information QUI TAM. (Archbold.)

County of —, } Be it remembered, that on the — day of — in  
to wit. } the year of our Lord — at — in the said  
county, C. D., of — in the county aforesaid, constable of the said  
township, who, as well for our sovereign lady the Queen as for himself  
doth prosecute in this behalf, personally cometh before me (or us) — of her  
Majesty's justices of the peace for the said county, and as well for our said  
lady the Queen as for himself, informeth me, (or us) that A. B. late of —  
in the county aforesaid, labourer, within the space of (one year, or  
whatever time is limited by statute) now last past, to-wit, on the —  
day of — in the year aforesaid, at — aforesaid, in the county afore-  
said (here state the facts and circumstances constituting the offence, as  
defined by the statute creating it), contrary to the form of the statute  
in such case made and provided; whereby, and by force of the statute  
in such case made and provided, the said A. B. hath forfeited, for his  
said offence, the sum of —. Wherefore, the said C. D. who sueth  
as aforesaid, prayeth the consideration of me (or us) the said justice (or  
justices), in the premises, and that the said A. B. may be convicted of the  
offence aforesaid; and that one moiety of the said forfeiture may be ad-  
judged to our said lady the Queen, and the other moiety thereof to the said  
C. D. according to the form of the statute in that case made and pro-  
vided; and that the said A. B. may be summoned to appear before me  
(or us), and answer the premises, and make his defence thereto.

Exhibited before — C. D.

NOTE.—It should be observed, as a general rule, that in all informations for pen-  
alties, wherein the informer is interested, by reason of his being entitled to a part of the  
penalty, upon conviction, he cannot be a witness. The information, therefore,  
would not be upon oath; it should be merely subscribed by the informer; and the  
facts must be proved by other testimony.

## INNS AND INNKEEPERS.

## Detaining Goods for the Reckoning.

It is said an inn-keeper may detain the horse of any guest  
for his feed, till payment.—*Bac. Abr. Inns.* But a horse com-  
mitted to an inn-keeper, may be detained only for his own  
meat, and not for the meat of the guest, or of any other horse.  
—*Ib.*; 1 *Bulst.* 207. An inn-keeper that detains a horse for  
his meat cannot use him.—*Bac. Abr. Inns.*

## Goods of a Guest Stolen out of an Inn.

An inn-keeper is answerable for those things which are stolen  
within the inn, though not delivered to him to keep, and though  
he was not acquainted that the guests brought the goods to the  
inn; for it shall be intended to be through his negligence, or  
occasioned by the fault of him or his servants.—8 *Co., Caley's*  
case. So, if he puts a horse to pasture without the direction  
of his guest, and the horse is stolen, he must make satisfaction;  
but otherwise, if with his direction.—*Ib.* In like manner, if

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an inn-keeper bids his guest take the key of his chamber and lock the door, and tells him that he will not take charge of the goods, yet if they are stolen, he shall be answerable, because he is charged by law for all things which come to his inn, and he cannot discharge himself by such or the like words.—*Dalt. c. 56.* A person is a guest who merely leaves his horse at an inn, as much as if he had stayed himself, because the horse must be fed, by which the inn-keeper has gain; otherwise, if he had left a trunk or a dead thing.—*1 Salk. 388.*

## Granting of Licenses.

By the Imperial Act 14 Geo. III. c. 88, intituled, "An Act for establishing a fund towards further defraying the charges of the administration of justice and support of the civil government within the province of Quebec, in North America," it was amongst other things enacted, that from and after the 5th day of April, 1775, a duty of £1 16s. sterling should be paid for every license granted by the Governor, Lieutenant Governor or Commander in Chief of said province to any person for keeping a house or other place of public entertainment, or for retailing wine, brandy, rum or other spirituous liquors within the said province.

\*By the provincial statute 33 Geo. III. c. 13, § 3, the words "*licensed to sell wine and other spirituous liquors*" shall be written, painted or printed over the door of such house of entertainment, under the penalty of 5s., recoverable before any one justice upon the oath of one credible witness, one-half of the penalty to go to the informer and the other to the Receiver General for the use of the province.

\*By the 11 Geo. IV. c. 9, § 2, every person keeping a shop and tavern, and taking a license for that purpose, shall pay a shop-keeper's license.

By the various provincial statutes, referred to in the note (a), the power of granting certificates for tavern licenses and making rules and regulations for the conduct of inn-keepers, &c. was vested in the magistracy; but now, by the late municipal enactments, this power has been transferred to and is now vested in the several local municipal authorities, as will be seen by the following extracts from the statutes now in force:

By 12 Vic. c. 81, § 31, the municipality of each township is authorized to make by-laws for "regulating inns, taverns, ale-houses and all other places for public entertainment within their jurisdiction, and to limit the number of them;" and in all cases where there exists no other provision by law for licensing such houses, to provide for the proper licensing the

(a) \*15 Geo. III. c. 1; \*6 Geo. IV. c. 4; \*3 Vic. c. 20; \*2 Vic. c. 21.

same at such rates as to the corporation of such township may seem expedient; the proceeds of such licenses, in cases not otherwise appropriated by law, to form part of the public funds of such township, and be disposed of as such corporation may consider advisable.

By 13 & 14 Vic. c. 65, which recites that it is "expedient to vest in the municipal authorities the power of fixing the number of taverns, beer-shops and houses of public entertainment, and prescribing the conditions on which *licenses* shall be obtained, and the duties paid thereon over and above that imposed by the imperial Act 14 Geo. III. c. 88," it is enacted by § 1, that so much of the acts therein mentioned (including the 3 Vic. c. 20), or of any other law in force in Upper Canada as vests in any justices of the peace the power of granting certificates for licenses to keep inns or houses of public entertainment, or of making rules for the conduct of such inn-keepers, or repealing such rules, or fixing the duties for such license, or repealing or altering any duty or sum so fixed, as may be inconsistent with any provision of this act, which is to be acted upon before the *first day of March* next (1851), shall be repealed, and the remaining provisions of said acts and license duties payable under them, shall remain in force (if not inconsistent with this act) until the first day of March next, after which they shall be repealed, except secs. 7, 8, 9 Vic. ch. 20, (which relate to sale of wines, &c. on board steamboats); and by § 4 the municipality of each township or incorporated village, the town council of incorporated towns, and the common council of each city in Upper Canada are authorized at any time after the passing of this act to make by-laws—1, for limiting the number of inns or houses of public entertainment in such township, village, town or city, for which licenses shall be issued, to be in force after the *last* of February, 1851, or for prohibiting licenses for any house in their respective municipalities, and for fixing the terms and conditions which shall be previously complied with, the description of house and accommodation, and the security to be given for observing by-laws, and the sum to be paid for such license over and above the imperial duty; for regulating such inns and houses of public entertainment, and for imposing penalties for contravention of by-laws; for *similar* purposes with respect to *ale* and *beer houses*, and other houses for the reception and entertainment of the public, where fermented or other manufactured liquors are sold to be drunk therein. § 5. At the annual election of councillors in the several townships, incorporated villages and towns and cities in Upper Canada, there shall be elected by the same electors in each township (not divided

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into wards) or incorporated village *three* inspectors of houses of public entertainment, and in each ward of any township, divided into wards, or of any such town or city, *one* such inspector; and such inspectors shall be subject, as other municipal officers, to any by-laws of the municipality touching their duties or remuneration, the security they shall give, and other like matters, and vacancies in the office of inspector shall be filled in like manner as in the office of councillor. § 6. It shall be the duty of such inspectors to see that the by-laws of the municipality are complied with, as regards the persons to whom licenses to keep houses of public entertainment and to retail spirituous liquors are to be issued, and for this purpose the said inspectors shall, after such previous visits and examinations as they may think proper, meet at such time, in each year, before the first day of March, and at such place as they shall think meet, or at such time and place before such day as the council of the municipality shall have appointed by by-law, for the purpose of determining what persons have, under the by-laws in that behalf, qualified themselves to obtain such licenses, and to give certificates to such persons, which shall state the sum payable by such persons respectively for such licenses under the by-laws of the municipality; and upon the production of such certificate and payment of the said sum and of the duty imposed by the said imperial act to the proper revenue inspector, he shall issue licenses to such persons respectively for the purposes aforesaid, which shall be in force from the date thereof until the last day of February in the then next year, and no such license shall be issued in favour of any person unless he shall produce such certificate as aforesaid; provided always, that if the number of persons who shall have complied with the requirements of the by-laws made in that behalf shall be greater than the number of persons to whom licenses may be issued under such by-laws, the inspectors shall determine (subject to any by-laws passed for their guidance in this behalf) to which of such persons licences may be granted with most advantage to the public. § 7. That the said inspectors shall perform similar duties with regard to inns, ale and beer-houses, victualling-houses, ordinaries and eating-houses, and other establishments of like nature, which by the by-laws of the municipality shall require licenses, and such duties shall be performed in such manner as shall be directed by such by-laws, and such licenses shall be issued at such times, for such periods, and by such officer as shall be directed by such by-laws; and any provision of law vesting in any other functionary any power hereby vested in the inspectors aforesaid, or otherwise inconsistent with this act, is hereby

repealed. § 7. Majority of inspectors to exercise all the powers of such inspectors, with power to adjourn any meeting from day to day, or to any future day; and in case of equality of votes upon any question, the mayor or town-reeve, or in his absence the functionary performing his duties, to have a casting vote, until other provisions made by by-laws. § 8. Nothing in this act contained to prevent the Governor in council from appointing any municipal officer or other person to issue licenses for keeping houses of public entertainment and retailing spirituous liquors therein, in any municipality, if he shall think proper to appoint such officer or person to perform that duty instead of the revenue inspector.

### INSANE PERSONS.

\*By 2 V. c. 11, § 1, it is enacted, that an asylum for the reception of insane and lunatic persons shall be erected on such plot of ground as shall be appropriated by the Govern or or purchased by commissioners under the authority of this act. § 2. The Governor authorised to appoint commissioners, of whom one shall be an experienced medical practitioner, for superintending the erection of said building, with power to employ a skilful architect to procure plans, and to adopt such plan as may seem best suited for the purpose. § 3. As soon as the building is completed and furnished for the reception of patients, the Governor to appoint a board of directors, to consist of not less than twelve persons, resident within the province; said board, or any two members thereof, at least once in each month, to visit the institution, to inspect the same, and annually, on the first Tuesday in November, to make a report of the state thereof, and of the patients therein, and the times of their admission or discharge, to the Governor, for the information of the legislature. § 4. Board of directors authorised to make rules and regulations for the internal management of the institution, and appoint a superintendent, who shall always reside at the asylum, and act as physician to the establishment; said board to have the appointment of all other officers and servants to the institution, and fix the amount of salaries, subject to the approbation of the Governor. Salary of the superintendent not to exceed £300 per annum. § 5. The board to meet at least once in each month, and oftener if they shall see occasion, at the institution, and minutes of their proceedings to be recorded in a book to be kept at the meeting-room; a plurality of votes at any such meeting to be binding; three directors to constitute a quorum; the chairman to have a casting vote in case of equality of votes. § 6. Any insane or lunatic person, being a subject of her Majesty and a resident of this province, may be

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received into the asylum upon proof to the satisfaction of the board, or any one member thereof, in case the board shall not be then sitting, of such person being a subject and resident as aforesaid, and upon the production of a certificate, signed by at least three resident practising physicians, that such person has been examined by them collectively, and that he is insane or a lunatic; and in case the superintendent, or any officer or servant of the asylum, shall admit any person into the institution charged with insanity or lunacy, without first requiring or receiving such certificate, together with an order from the board, signed by at least one member thereof, he shall forfeit and pay £100 for each offence, to be recovered by action of debt in any of her Majesty's courts of record in this province, by any person who shall sue, one moiety of the penalty recovered to go to the institution, the other to the informer. § 7. The board to establish the sum per diem to be paid by the person or persons so admitted towards the maintenance, attendance and support of such person or persons, to be paid quarterly in advance, and security given by bond to the treasurer of the institution for future payments. § 8. Destitute insane or lunatic persons may be admitted upon proof to the satisfaction of the board, or if not then sitting, of any one member, of such person being an inhabitant and a subject and without means. § 9. The expense of removing destitute lunatics to be borne by the district in which they were last resident, as also the expense of their return upon recovery. § 10. In case any lunatic shall become possessed of any property after his admission, and shall have no relatives or guardians willing to give the necessary security to the institution for the payments required, the Court of Queen's Bench, upon the application of the next of kin, may, in term time, appoint a committee of the person and property of such lunatic, who shall have power to manage his estate. § 11. The accounts of the institution to be made up by the superintendent quarterly, on the first Tuesday in January, April, July and October, in each year, and audited by the board, and a copy transmitted to the Governor. § 12. Vacancies in the board by death, resignation, or departure from the province, to be supplied by the Governor. § 13. Justices of the peace in each district authorised, at their general quarter sessions next holden after the passing of this act, to levy by assessment on each and every inhabitant householder in their districts, in the same manner as by law any assessment may now or hereafter be levied for any public purpose within the same, an additional rate or assessment of one-eighth of a penny in the pound, which, after deducting the expenses of levying and collecting, shall be paid by the district treasurer to the

receiver-general for the purposes of this act. § 14. The assessment to be levied and collected annually, at such times and in the same manner as other rates.

By 11 G. IV. c. 20, § 2, the grand jury at quarter sessions are authorised to make a presentment to the court of the sum to be allowed for maintenance and support of insane persons, expended before such quarter sessions: also, such sums as they may think necessary for maintaining insane destitute persons for the year next ending said sessions; presentment to be made yearly. § 3. The same to be paid by the treasurer of the district; by warrant from the chairman of the quarter sessions: continued by various acts, and lastly by 13 & 14 V. c. 10, until the 1st day of January 1851, and to the end of the next session.

### INSOLVENT DEBTORS.

\*By 45 G. III. c. 7, any prisoner in execution for debt may apply to the court whence such execution issued, and make oath that he is not worth £5, and the court shall order the plaintiff, by rule to be served on the plaintiff or the attorney, to pay such defendant in execution 5s. weekly maintenance, so long as he shall be detained in prison at the suit of such plaintiff, to be paid in advance to the prisoner or gaoler, on Monday in every week, on failure of which the defendant shall be released: such payment not to be made if the plaintiff can prove to the court that defendant has secreted or conveyed away his effects, to defraud his creditors.

\*By 2 G. IV. c. 8, plaintiffs may tender interrogatories to debtors in execution claiming weekly allowance, touching their insolvency, and their answer may be sworn before commissioners for taking affidavits. § 2. Debtor shall receive no benefit from any order for a weekly allowance until he has answered the interrogatories.

\*By 8 G. IV. c. 8, the court in term time, or a judge in vacation, may order prisoners to be discharged, on non-payment of their weekly allowance, such discharge not to operate as a release of the debt.

By 4 W. IV. c. 3, debtors in custody on *mesne* process making affidavit of being in close custody, unable to procure bail, and not worth £5, shall be entitled (by judge's order) to the weekly allowance, as if in custody on *final* process, and in default of payment to be discharged, on filing common bail. § 2. Plaintiff may tender interrogatories as if the defendant were charged in execution.

By stat. 5 W. IV. c. 3, no person shall be held to bail for any debt under £10 by the King's Bench, or District Court, after the

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1st of June next. § 2. No person shall be taken in execution for costs only, nor upon any judgment where the debt shall not amount to £10 or upwards, exclusive of costs. § 3. Any person in execution upon any judgment for any debt or damages not exceeding £20, exclusive of costs, and who shall have lain in prison three calendar months, or been upon the gaol limits for twelve calendar months, may, upon application to the court in term time, obtain his discharge, his property still remaining liable to the debt. § 4. Any person in execution upon any judgment for any debt or damages exceeding £20, exclusive of costs, and who shall have lain in prison thereupon for six calendar months before the application for his discharge, when the debt shall not exceed £100, or twelve calendar months when the debt shall exceed £100, may, upon giving thirty days' notice in writing to the opposite party or his attorney of his intention to make such application, apply for his discharge in term time, to the court from whence execution issued. § 5. The court may examine into the matter, and may in its discretion discharge the debtor. § 6. Any person who shall assign, remove, conceal or dispose of any of his property, with intent to defraud his creditors, and any person who shall receive such property with such intent, shall, upon conviction, be deemed guilty of a misdemeanor, and such offence may be tried before any court of oyer and terminer, or general gaol delivery, and may be punished by fine or imprisonment, not exceeding £100, or six months' imprisonment. § 7. Act to continue in force for four years: and made perpetual by 3 V. c. 7.

By 10 & 11 V. c. 15, § 1, gaol limits shall extend over the whole district. § 2. Persons under arrest, or on bail upon attachment or other process from any of the courts of law or equity in Upper Canada, for non-payment of any money or demand, being a sum certain or capable of computation, and not a penalty, shall be entitled to the benefit of the gaol limits, weekly allowance, and discharge for non-payment thereof; and be subject to interrogatories and re-committal, with all other privileges and liabilities, as if in execution for debt as a defendant. § 3. Debtors in execution for debt, and not worth more than £5, (exclusive of wearing apparel, bedding and implements of housekeeping), shall be entitled to be discharged, upon answering interrogatories.

**INSPECTORS OF DISTRICTS.**

By 43 G. III. c. 9, the Lieutenant Governor is authorised to appoint (during pleasure) an inspector in every district, who shall superintend, collect and account for (as hereinafter provided) his Majesty's revenue arising from licenses to sell by

retail wine and spirituous liquors, or to use and employ stills for the distillation of spirituous liquors. § 3. In all cases not otherwise provided for by this act, persons desirous of obtaining a license shall apply to the inspector. § 4. And it shall be the duty of the inspector to ascertain persons selling wine or spirits, or using stills without license, or larger stills than those licensed, and proceed against the offenders. § 7. The inspector, before entering upon his office, shall take and subscribe the following oath, before any two justices of the district, who are directed to transmit a certificate thereof to the Lieutenant Governor :

I, A. B., do swear on the holy Evangelists of Almighty God, that I will well and truly execute, do and perform, the duty of inspector of his Majesty's revenue, arising from shop, tavern and still licenses, and will duly and impartially superintend the collection thereof, according to the best of my skill and knowledge; and in all cases of fraud, or suspicion of fraud, that shall come to my knowledge, I will spare no person from favour or affection, nor will I aggrieve any person from hatred or ill-will, and that I will in all cases faithfully do, execute and perform, to the best of my skill and knowledge, all and every the duties imposed upon me by an act passed in the provincial parliament, in the forty-third year of his Majesty's reign, intituled "An Act for the better securing to his Majesty, his heirs and successors, the due collection and receipt of certain duties therein mentioned."

And no inspector shall enter upon his office until he shall have given security by two sureties in £250 each, and himself in £500 to the king, for the due performance of his office. § 8. The following fees are authorised to be taken by the district inspector:—

	s.	d.
For filing every requisition for a still license .....	1	3
For issuing the license .....	2	6
For filing the certificate of the magistrates and clerk of the peace, to the person requiring tavern license .....	1	3
For issuing the license .....	2	6
For issuing shop licenses .....	2	6

The above act is made perpetual by 48 G. III. c. 8.

By 44 G. III. c. 7, the executor, &c. devisee or purchaser of any person licensed to work a still, may, within twenty days, give notice to the inspector, and make a requisition for a license for the remainder of the term, the purchaser producing his receipt for the purchase money. § 3. After such notice the inspector may endorse the notice, as follows:—

A. B. is hereby licensed to work the within mentioned still or stills, for the remainder of the term by this license first granted.

C. D., Inspector for the district of ———

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\*By 50 G. III. c. 6, the inspector is authorized to grant licenses for billiard tables (see title "Billiard Tables"), such licenses to be dated on the 29th September, and to expire on the 28th September following; the person requiring such license paying 5s. upon application, and 5s. upon issuing such license. § 5. All monies received by the inspector under this act, (except what he shall be entitled to receive for his own benefit) shall be paid to the receiver general on or before the 31st December.

\*By 56 G. III. c. 3, inspectors of districts are required to render, within one month after the 5th January in each year, (during this act) to the inspector general, an account upon oath, of all monies which they shall have received, under any act of parliament, and shall pay the amount to such receiver general within two months afterwards; § 3, and shall also transmit quarterly accounts to the inspector general, upon oath, of all monies by them received, and within one month afterwards pay the amount to the receiver general. § 4. They are also required to furnish quarterly, on the first day of the general quarter sessions, to the clerk of the peace, an accurate list of all still, shop and tavern licenses, issued the preceding quarter. § 6. And every inspector neglecting to transmit such account, or pay over the monies to the receiver general, as required by this act, shall, for every neglect, forfeit £100, to be recovered by any one that will sue in the King's Bench, by action of debt, &c., one moiety of which shall be paid to the informer, and the other to the use of the province.

\*By 59 G. III. c. 2, inspectors are required, upon the production of a certificate, signed by the chairman of the general quarter sessions, to grant the party a tavern license, on receiving payment of the duty on such license.

\*By 59 G. III. c. 6, § 5, inspectors are not to charge any additional fee for issuing any license under the provisions of that act, nor retain more than five per cent. upon the duties thereby directed to be paid: and by 4 G. IV. c. 13, § 10, inspectors of districts are not to receive more than £100 per annum as per centage, under that or any other act.

\*By 6 W. IV. c. 4, § 3, inspectors are required to furnish to the respective clerks of the peace for their districts, and to the chamberlain of the city of Toronto, on or before the 1st February in every year, a list in writing of all persons who have taken out licenses in their respective districts, and in Toronto, either as inn or tavern-keepers, or as wholesale store-keepers, to be published by the chamberlain of the said city, and by the clerks of the peace, in at least two newspapers in each district. § 9. Act to be in force four years. Made perpetual by 3 V. c. 21.

By \*3 V. c. 19, § 15, every inspector shall be authorised to retain £12 10s. per cent. of duties he shall collect, until such duties shall amount to £1000, and £5 per cent. over and above £1000. § 16. Such per centage not to exceed £300 per annum.

\*By 3 V. c. 20, § 12, whenever any prosecution shall be instituted by any inspector against any person for the sale of spirituous liquors without a license, in case such prosecution shall fail for want of evidence, the justices, before whom the party shall have been tried, shall tax the necessary costs of such prosecution, and the said inspector shall pay the same out of any monies in his hands arising from duties imposed upon the sale of spirituous liquors, and charge the same in his accounts: Provided the justices, or a majority of them, shall certify that it did appear to them that there was sufficient cause for commencing such prosecution. § 3. Inspectors are required, either in person or by deputy, to visit every part of the district for which they shall act, at least twice in each year to inspect all licensed houses, distilleries and shops where spirituous liquors are sold, and to ascertain whether the duties by law imposed upon the sale and distillation of spirituous liquors are evaded, and whether the licensed inns have the necessary accommodation for travellers required by law, and to make a report of the state of the different inns and ale-houses in their district to the justices of the peace previous to the general licensing day; and for the performance of such duty and defraying the expenses attending the same, each such inspector shall be entitled to fifteen shillings per day during the period he is actually engaged therein, and may deduct the amount from any monies coming to his hands as inspector; such account to be previously audited by the court of general quarter sessions.

### INSPECTORS OF TAVERNS.

By 13 & 14 V. c. 65, so much of the \*50 G. III. c. 2, and \*6 W. IV. c. 4, and \*3 V. c. 20, and \*3 V. c. 21, or of any other law in force in Upper Canada, as vests in any justices of the peace the power of granting certificates for licenses to keep inns or houses of public entertainment, or of fixing the duty payable on such licenses, or of repealing or altering any law so fixed, or as may be inconsistent with this act (after the first day of March 1851), is hereby repealed, except the 2th & 3th sections of 3 V. c. 20 (relative to steamboats), which shall remain in force. § 2. Shopkeepers' licenses not to be affected by this act. § 4. The local municipalities of townships, towns and cities, are empowered to make by-laws for

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limiting the number of inns, &c. for which licenses to retail spirituous liquors to be drunk therein shall be issued, to be in force after the last day of February 1851, (or for prohibiting any such license), and for fixing the sum payable for such license over and above the duties imposed by the Imperial act (a).

By 13 & 14 V. c. 65, § 5, three inspectors of houses of public entertainment are to be appointed at the annual election of councillors in each township (not divided into wards) or incorporated village; and in each ward of any township divided into wards, or of any such town or city, one such inspector; § 6, whose duty it shall be to see that the by-laws of the municipality are complied with, as regards the persons to whom licenses to keep houses of public entertainment, and to retail spirituous liquors, are to be issued; and, after due inquiry, to give certificates to such persons as shall be qualified, stating the sum payable by such persons respectively for such licenses; and upon the production of such certificate, and payment of the said sum and of the duties imposed by the said imperial act, to the proper revenue inspector, he shall issue licenses to such persons respectively, which shall be in force from the date thereof until the last of February in the next year; and no such license shall be issued in favour of such person unless he shall produce such certificate as aforesaid.

See further, title "Inns and Innkeepers," "Intemperance," "Shopkeepers."

## INTEMPERANCE.

By the 13 & 14 V. c. 27, it is enacted as follows:—

*Death by Intoxication.*—§ 6. When any person shall have drunk spirituous liquors in any inn or tavern, with the permission or sufferance of the keeper thereof, and shall, while in a state of intoxication or drunkenness, arising out of the use of such spirituous liquors, come to his death by committing suicide, or by drowning, perishing from cold, or any other accident, such keeper of any such inn or tavern shall be guilty of a *misdeemeanor*, and being convicted thereof, after having been indicted and tried for such offence in due course of law, shall be liable to be imprisoned in the common gaol of the county in which such offence shall have been committed for a period not less than two, and not more than six months, and pay a penalty of not less than £25 nor more than £100, to be paid to the heirs, legal representatives or surviving relatives of the deceased, as the court may consider most in need or deserving of the same.

*Temperance Hotels.*—§ 7. Whenever any person shall adduce proof

(a) 11 G. III. c. 88, which imposes a duty of £1 10s. Od. sterling on Tavern Licenses. See further on this subject, title "Inns and Innkeepers," p. 376.

of his honesty and good moral character, by a certificate under the hands of four municipal electors of his locality, and shall be seised of real or personal property to the value of £100, such person shall be entitled to receive from the municipal council for his locality a license to keep a temperance hotel for the reception of travellers; and for such license shall pay to the said council a sum not exceeding 75s. nor less than 20s.; provided that no person so licensed shall sell or give, or cause to be sold or given to drink, any spirituous or malt liquor, under a penalty of £10 for every offence: and any person convicted of retailing intoxicating liquors without license, or of keeping a disorderly house, or of selling intoxicating liquors on Sundays and holidays, shall for every such offence incur a penalty of £10.

*Offences, how punished.*—§ 8. Offences against this act shall be summarily disposed of by one or more justices of the peace, on the evidence of one credible witness; and every party found guilty shall in default of immediate payment of the fine be imprisoned under warrant of such justice until payment of such fine, and of the costs incurred for the recovery thereof. § 10. No person not licensed to keep a temperance hotel, or as an apothecary, shall vend or retail any description of liquor known as a temperance drink—such as spruce beer, sarsaparilla, raspberry vinegar, ginger beer, essence or juice of lemons or of oranges, or lemonade—under a penalty of £10 for every such offence.

*Tavern Lists, &c.*—§ 11. A list of the licensed taverns and temperance hotels shall be transmitted yearly by the officer by whom the licenses have been issued, to the clerk of the peace of the county, which shall be published in at least one newspaper of the county or district in *Lower Canada*; and a proper sign shall be hung up at each of the said taverns or temperance houses, for the information of travellers; and any person, not licensed, who shall hang up or place near his house any sign which may induce travellers to think that he has a license, shall thereby incur a penalty of £5.

*Witnesses.*—§ 12. Any person may be a competent witness under this act, although he be related, allied or of kin to, or in the service of, any party who may bring a complaint, or who may be complained against for any infringement of this act; and if any witness, legally summoned to appear, shall refuse or neglect so to do without reasonable cause, he shall incur a penalty of £5; and any person endeavouring to prevent any witness from appearing to give evidence, shall incur a penalty of £20.

*Punishment of Drunkards.*—§ 13. If it shall be within the personal knowledge of any magistrate, or on a complaint upon oath made by any one before such magistrate, that any person shall have been seen in a state of intoxication in any public place whatsoever, or in any place in which such intoxicated person shall be exposed to public view, such magistrate shall cause such person to be brought before him, and place him in custody until he shall have recovered his reason; and the person so found intoxicated shall incur and pay a penalty of not less than 5s. nor more than 25s. for his said offence, together with the costs of suit, the expenses of arresting the person so found intoxicated, and of keeping him in safe custody; and in default of payment shall be imprisoned

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in the house of correction or other place of confinement for a space of time not exceeding one month.

*Distill—* &c.—§ 14. It shall not be lawful for any distiller, merchant or trader, who shall not have a tavern license, to sell intoxicating liquors in less quantities than one gallon, except wine, which may be sold by the bottle; and such liquor when sold shall be taken away from the premises of such merchant or trader within twenty-four hours after the purchase thereof: Provided always, that when any person shall produce a certificate from a physician, a priest, or a minister of religion, stating that such a person really requires it as a remedy, then in such case only it shall be lawful for such merchant or trader to sell to such person any quantity he shall require.

*Inspectors' Visits.*—§ 17. The inspector of revenue, or his deputy, in every revenue district, shall visit twice in every year all breweries, distilleries and stores in which intoxicating liquors are sold in their respective revenue districts, in order to examine whether the said liquors are adulterated; and on information by any such revenue inspector or his deputy, before any justice of the peace, that any such liquor is adulterated, the party in whose possession such adulterated liquor shall be found, shall be compelled to pay a penalty of not less than £10; and the said inspector or his deputy shall spill the said liquor. The said inspector or his deputy shall also twice in every year visit the taverns and *temperance hotels* within their respective districts, in order to ascertain whether everything is carried on according to law therein; and the proprietors and keepers of such breweries, distilleries, taverns, stores and temperance hotels, refusing admission to the inspector or his deputy, shall be liable, on conviction on the oath of the inspector or his deputy, to a penalty of £5, and shall make a report thereof to the municipal council; and the said inspector or his deputy shall be entitled to receive from the owner of any such distillery, brewery, store, tavern or temperance hotel, the sum of 5s. for every certificate; and it shall be lawful for the said inspector or his deputy to visit any house in which it shall be suspected that spirituous liquors are retailed without a license; and if they find any adulterated liquors therein they shall spill the same, and on the information of any such inspector or his deputy, any such person in whose possession such adulterated liquors shall be found, shall be condemned to pay a penalty of £5.

*Pleadings.*—§ 18. All justices of the peace before whom any trial shall be had under this act, shall take down minutes in writing of the proceedings and evidence at such trial, in case an appeal shall be brought from any judgment rendered by them. § 19. If on the evidence of one credible witness it shall appear that any party accused of any offence under this act intends to abscond, a warrant shall be issued by any such justice for the immediate arrest of such party, who shall give two good sufficient sureties in £50 each for his appearance at his trial, or be imprisoned until such trial shall be disposed of.

*Penalties.*—§ 20. One-half of the penalties under this act shall go to the prosecutor, and the other half to the municipality; or if no municipality, then to the treasurer of the school trustees or school

commissioners of the locality, for the support of common schools and purchase of books.

§ 23. This act to take effect upon and after the 5th April 1851.

### JOINT STOCK COMPANIES.

By 13 V. c. 28, any *five* or more persons may form a company for the purpose of carrying on any kind of manufacturing, shipbuilding, mining, mechanical or chemical business, for a term not exceeding *fifty* years, upon complying with the requisitions of this act. § 11. Stockholders to be liable for the debts of the company only to the amount of their shares, *save and except* by § 17, the stockholders shall be jointly and severally liable for debts due the laborers, servants and apprentices of such company; but no stockholder shall be liable in this or any case for any debt *not payable* within one year, nor unless suit brought within the year; nor shall any person ceasing to be a stockholder be liable for any debt unless sued for within *two* years after he shall have ceased to be a stockholder, nor until execution issued against the company and *nulla bona* returned.

### JURISDICTION.

\*By 59 G. III. c. 10, it is enacted, that all crimes and offences committed in any tract of country, or parts of this province, not being within the limits of any described county or township, may be inquired of, and tried within any district of this province, and may and shall be laid and charged to have been committed within the jurisdiction of the court which shall try the same; and such court may proceed to trial, judgment and execution, or other punishment, as if such crime had been committed within the district. § 2. When such parts of the province shall be formed into counties or townships, such offences then shall be tried in the district in which such county or township shall be comprehended.

See also title "Indictment."

### JURY.

By stat. 14 G. III. c. 83, § 11 (which was passed in 1774, and while Upper Canada formed a part of the province of Quebec), it was enacted that the criminal law of England should continue to be administered and observed as law in the province of Quebec, both in regard to the offence as well as the method of prosecution and trial; and subsequently, by a statute of the province of Upper Canada, the \*40 G. III. c. 1, the criminal law of England, as it stood on the 17th September 1792, was also declared to be the criminal law of this province,

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but without affecting the provisions of the above statute of the 14 G. III. c. 83. By \*32 G. III. c. 1, the trial by jury is also directed to be used in all civil causes.

Sir W. Blackstone says, the trial by jury, or the country *per patriam* is also that trial by the peers of every Englishman, which, as the grand bulwark of his liberties, is secured to him by the great charter.—*Bl. Com. vol. 4, p. 349.* And again, that the founders of the English law have, with excellent forecast, contrived that no man should be called to answer to the king for any capital crime, unless upon the preparatory accusation of twelve or more of his fellow-subjects, the *grand jury*, and that the truth of every accusation, whether preferred in the shape of indictment, information or appeal, should afterwards be confirmed by the unanimous suffrage of twelve of his equals and neighbors, indifferently chosen and superior to all suspicion.—*Ib.*

*Act for the regulation of Juries.*

By 43 V. c. 55, intituled "An act for the consolidation and amendment of the laws relative to jurors, juries and inquests in Upper Canada," various provisions are made, of which the following is an abridgment:—

**Qualification of Jurors.**—§ 1. Every man 21 years of age (not infirm or decrepit), assessed as mentioned in the act, shall be liable to serve on grand and petit juries. Three-fourths of the assessed inhabitants are to be copied from the assessment roll of the township, &c., commencing with the person rated at the highest amount and proceeding successively to the person rated at the lowest amount, until the names of three-fourths of the persons assessed shall have been copied from the roll, and the amount for which the last of such persons shall be assessed shall be the qualification for a juror.

**Exemptions.**—§ 5. All persons upwards of 60 years of age—government officers—clerks and servants in public departments—judges—sheriffs—coroners—gaolers—clergymen of whatever denomination—members of the Law Society—barristers—students—attornies—solicitors and proctors actually practising—officers of courts of justice—physicians, surgeons and apothecaries—officers in the army and navy on full pay—pilots and seamen—officers of the post office, customs and excise—sheriffs' officers and constables—county, township, city, town and village treasurers, clerks and town clerks—professors, masters and teachers of any university, &c., and officers and servants of any such establishment—all corporate officers (excepting justices of the peace), millers and firemen. § 6. *And from serving on petit juries:*—Members of parliament—wardens and members of county councils—mayors—town-reeves and deputy town-reeves—justices of the peace, and members or officers of any corporation.

§ 7. Jurors drawn and serving the year preceding shall also be exempt, if *two* complete jury lists can be made up without, and with one year's additional exemption for each jury list made up over two.

**Selection and distribution of Juries.**—§ 11. The mayor or town-reeve, the city, town, village or township clerk and assessors, shall be, *ex officio*, selectors, and assemble annually on the 8th day of September for the purpose of selecting juries; § 15, and make duplicate reports, one to be deposited with the clerk of the peace and the other with the town clerk.

**Jurors' Book.**—The clerk of the peace, between the 15th September and 1st October annually, shall transcribe the names of jurors so selected into the jurors' book in four rolls, to be called—1. Roll of grand juries to serve in superior courts. 2. Roll of grand jurors to serve in inferior courts. 3. Roll of petit jurors for superior courts. 4. Roll of petit jurors for inferior courts.

**Balloting Jury Lists.**—The clerk of the peace shall prepare for each roll a distinct set of ballots; § 19, and on the first day of the sessions annually next after the 1st day of October, he shall publicly in court deliver to the chairman the jurors' book for the then next year, and the four parcels of ballots, together with the jurors' books for so many of the next preceding years as may be required, and make oath of their accuracy, whereupon the court shall determine upon balloting a full, two-thirds, or half jury list, composed of the following numbers:—

	Full list.	Two-third list.	Half list.	
Grand Jurors .....	48	38	24	} Superior Courts.
Petit Jurors .....	144	96	72	
Grand Jurors .....	96	64	48	} Inferior Courts.
Petit Jurors .....	288	216	144	

§ 20. The justices shall then (or at an adjourned sitting) proceed to ballot the jurors in the form prescribed by the act, beginning with grand jurors for the superior courts; and if the party balloted be not exempt, nor any cause shewn by him, or by his counsel or attorney, his name shall be inserted in the minute book of the court, after which the names balloted, alphabetically arranged, shall by the clerk of the peace be copied into the jurors' book with the title of "the grand jury list." § 21. The other jury lists to be balloted in like manner. § 22. Such lists to be certified and deposited in the office of the clerk of the peace, § 23, who shall on or before the 31st December, deposit a correct copy of such jurors' book in the office of the clerks of the crown and pleas of the superior courts at Toronto, and another in that of their deputy for the county.

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*Drafting panels from Jury lists.*—§ 25. The sheriff shall give notice by public advertisement in his office and on the doors of the court-house, of the time he will attend at the office of the clerk of the peace to draft such panel; at which time he shall publicly draft such panel in the presence of the clerk of the peace and any *two* justices and of any other person or persons who may desire to attend; *eight* days previous notice to be given. § 26 & 27 prescribes the mode and form in which the drafting such panels is to be made by *ballot*, after which the sheriff shall annex a panel to the writ or precept containing the names, places of abode and additions of the persons so drafted upon such panel, and transmit a copy thereof to the clerk of the peace, and one to each of the clerks of the crown and pleas and to their deputies for the county. § 28. The number of petit jurors not to be less than 48 nor more than 72 in any case unless by direction of the judge.

*Jury Process.*—§ 29. Precepts are to be issued by the judges of the respective courts for the return of a competent number of grand and petit jurors. § 30, 31, 32, 33, 35, relate to particular forms of jury process.

*Drawing Jury at the trial.*—§ 36. The jurors' names are to be delivered to the clerk of assize and put into a box or urn, and upon the trial of any issue, *twelve* are to be drawn out; and in case of absence or challenge others are to be drawn out until the number is completed. The jury are then to be sworn and kept apart by themselves until their verdict is rendered, or they are discharged by consent of parties or leave of the court, and then the same names are to be returned to the box or urn.

*Special Juries* provided for by § 39 and subsequent clauses down to § 53, inclusive.

*Challenges.*—§ 55. Want of qualification to be a sufficient ground; § 56, but not want of freehold alone; § 57, nor want of a knight on the panel; nor for quashing the array. § 58. Persons arraigned for *murder* not admitted to challenge above the number of *twenty*; and defendants arraigned for *misdeemeanour*, if tried together, may unite in challenge of *two* jurors. § 59. Cause to be assigned if the challenge be made on the part of the crown. § 60. In all civil cases, either party may challenge *two* jurors without assigning cause, not being special jurors.

*Summoning Jurors.*—§ 61. Grand and petit jurors to be summoned *eight* days before hand, by note in writing, under the hand of the sheriff or proper officer, delivered to the party, or, in case of absence, left at his usual place of abode; and in case of *special jurors* three days' notice to be sufficient.

*Penalties.*—§ 63 authorizes the court to set such fine for

non-attendance of jurors as it may think fit, unless reasonable cause be shewn. § 64. *Viewers* neglecting to attend to be subject to a penalty of £5 and upwards, as the court shall think fit. § 65. The sheriff, upon writs of inquiry, &c., may impose a fine not exceeding £5 on absent jurors (unless reasonable cause be shewn), recoverable, as other fines of court, by *estreat*, § 66. The sheriff returning any man on a jury not drawn upon the panel, or clerk of assize, &c., wilfully recording the appearance of any person summoned who did not appear, to be subject to such fine as the court shall think proper. § 67. Any sheriff or other officer taking any reward to excuse jurors, or any bailiff, &c., summoning any person not specified in his warrant, or not the full time required by law, shall be liable to such fine as the court may think proper. § 68. Any sheriff or other officer making any alteration in the rolls, lists or panels (except in compliance with this act), or neglecting to prepare the jurors' book and ballots, or omitting to return the same to the court, or to perform any other duty required by this act, or doing anything inconsistent with this act, shall for every such offence forfeit £50, recoverable in any court of competent jurisdiction. § 69. Any clerk of the crown, or deputy, making any alteration in the rolls, lists or panels, or wilfully certifying as true, any copy of any jurors' book not being true, shall, for every offence forfeit £50, recoverable in any court of competent jurisdiction. § 70. Any assessor neglecting to complete his assessment roll and return the same to the clerk of the township, &c., on or before the 1st September, shall forfeit £50; § 71, and any municipal officer having at the time of the annual meeting of the selectors of jurors, in his charge or custody the assessment roll or rolls of such city, town, village or township, who shall neglect to perform the duties required in § 11 as regards the production of the same, shall forfeit £25, recoverable in any court of competent jurisdiction. § 72. Any selector wilfully making a false report, or taking reward, or neglecting to make report and deposit the same in the proper office on or before the 15th September, shall forfeit a sum not exceeding £20 nor less than £5, at the discretion of the justice before whom he shall be convicted. § 73. Any clerk of the peace omitting to perform any duty required in § 18, 19, 20, 21, 22, 23, or doing anything contrary thereto, he or his deputy so offending shall forfeit £50. § 74. All fines imposed under this act by any of the courts of law, shall be levied and applied in like manner as any other fines imposed by such courts; and all other penalties imposed by this act (for which no other remedy is given), shall, on conviction before any justice within his jurisdiction, be levied, unless forthwith paid, by distress

and sale by warrant under the hand and seal of such justice, who is hereby empowered to hear and examine witnesses on oath or affirmation, and to mitigate the penalty to the extent of one moiety, if he shall see fit; and all penalties, the application whereof is not herein particularly directed, shall be paid to the complainant; and for want of sufficient distress the offender shall be committed by warrant under the hand and seal of such justice, to the common gaol or house of correction for such term not exceeding six calendar months as such justice shall think proper, unless penalty sooner paid.

*Application of Provisions.*—In every city where there shall be established a recorder's court or any other court, civil or criminal, having local jurisdiction, and wherein jurors shall be required, the clerk of such court shall annually prepare the jurors' book for such city; and the recorder, chairman or presiding member of such court, and the clerk of such court, shall respectively perform the duties in respect of such books, ballots and jury lists, as herein before prescribed to the quarter sessions and the officers thereof; and all other duties by this act prescribed to the sheriffs, shall as respects grand and petit juries be performed by the high bailiff or other officer as aforesaid, with the like form of proceeding. § 76. The like powers and duties imposed by this act on justices are also to devolve on aldermen of cities. § 77. The duties of sheriffs and high bailiffs, clerks of the peace and clerks of recorders' courts, may be performed by deputies. § 78. Prescribes the duties of coroners upon writs of *venire facias*. § 79. The directions in this act respecting precepts for grand jurors' panel at the assizes, shall be observed and followed with respect to the general quarter sessions and recorders' courts. § 80. Similar provision made respecting petit jurors. § 81 relates to the table of fees to be taken under this act. § 82. In case of no sittings or sessions after the 1st October in any county or city at which the jury lists are hereby required to be made from the jurors' books, the Governor may by warrant fix a day for such purpose. § 83. As to the oath of the clerk of the peace in certain cases. § 84. Former powers of superior courts continued with respect to issuing any writ or precept, or making any award or order for the return of a jury for the trial of any issue, or for the amending or enlarging the panel of jurors, &c. § 85. Justices of assize may, if they think fit, direct the sheriff to summon and empanel such number of jurors not exceeding 144 as they think fit to serve indiscriminately on the criminal and civil side: § 86. Provides for *sales-men* in default of jurors. § 87. Indemnity to the sheriff for empannelling jurors not qualified. § 88. The sheriff is to note the non-attendance of jurors on the

jury list. § 89. Jurors attending shall be entitled to a certificate from the sheriff of attendance on payment of 1s. § 90. The high bailiffs of cities are also to note on the jury list the non-attendance of jurors. § 91. Jurors attending entitled to a certificate from the high bailiff on payment of 1s. § 92 relates to attainds and inquests. § 93. Embracery punishable as heretofore. § 94. Affirmation in lieu of oaths may be made by certain parties. § 95. Verdicts not to be impeached by non-compliance with any of the directions in this act. § 96. This act not to affect the power of any court or judge in regard to trials by jury, jury process, juries or jurors, except as repealed or altered by this act. § 97 repeals former acts mentioned in schedule C, § 98.

§ 99. The Governor authorized to extend the time for the operation of this act during the present year in certain cases. § 100. Assessment rolls for the present year to be used in making the jury lists for 1851. § 101. Clerks of the peace to perform certain duties for the residue of the year 1850, as heretofore.

For schedules and tables of fees see the act.

\*By 2 G. IV. c. 1, § 30, every common juror shall be allowed 1s. 3d. in every cause in which he shall be sworn, to be paid by the plaintiff or his attorney.

#### Of Challenges.

Challenges are of two kinds, viz.—either to the *array*, which must be in writing; or the *polls*, which may be verbal, and may be made either on the part of the king, (i. e. the prosecutor) or of the prisoner.—4 Bl. Com. 352. A challenge to the array is an exception to the whole panel in which the jury are arrayed. There are two descriptions of causes of challenge to the array, viz. :—*principal causes* of challenge, and causes of challenge to *favour*. The following are principal causes of challenge to the array, viz. :—If the sheriff, or other officer, be of kindred to the plaintiff or defendant; if any one or more of the jury be returned at the nomination of either party; if the plaintiff or defendant have an action of battery against the sheriff, or the sheriff against either party; so, if either party have an action of debt against the sheriff; but otherwise, if the sheriff have an action of debt against either party; or if the sheriff have parcel of the land depending upon the same title; or if the sheriff, or his bailiff which returned the jury, be under the distress of either party; or if he be counsel, attorney, officer or servant, of either party; gossip, or arbitrator in the same matter, and treated thereof.—1 Inst. 156. A challenge to the *array* for favour, arises from matter fit to be left to the conscience and

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discretion of the triers, under the particular circumstances of each individual case. Thus, it is said, that if one of the jurors returned be a tenant to the sheriff; or if there be a family connection between one of the jurors and the sheriff, this may be ground of challenge to the array for favor: that is, matter to be left to the triers to decide whether it indicates such partiality as should avoid the array.—3 *Bl. Com.* 359.

Challenges to the *polls* are challenges of individual jurymen, and are either peremptory or for cause; peremptory challenges are at the mere will of the party, without any reason given.—*Co. Lit.* 156. In cases of treason or felony, the prisoner by the common law might peremptorily challenge 35, but by stat. 22 H. VIII. c. 14, § 6, the number was reduced to 20, in petit treason, murder and felony; and in case of high treason and misprision of treason, it was taken away by stat. 33 H. VIII. c. 23, but revived by stat. 1 & 2 P. & M. c. 10.

\*By 3 W. IV. c. 4, and 4 & 5 V. c. 24, § 16, every peremptory challenge by any person indicted for treason or felony, beyond the number by law allowed, shall be void, and the trial may proceed as if no such challenge had been made. In cases of *misdemeanor*, there is no right to peremptory challenge, but it is usual for the officer to abstain from calling any reasonable number of names objected to by either party, taking care to leave enough to form a jury.—*Dickenson Q. S. p.* 344.

A challenge to the *polls*, or of individual jurymen, is like a challenge to the array, a principal challenge, or a challenge to the favor. The grounds of principal challenge are—1. The rank of the party, as being a peer of the realm. 2. For some personal incapacity, as if a jurymen be an alien or a minor. 3. On account of some palpable ground of bias, as if the juror be of the blood or kindred of either party; or under his power or influence; as tenant or servant; or of counsel with him—4 *Bl. Com.* 361; or if he has declared his opinion beforehand *Haw. b. 2, c. 43, § 29*; or has indicted the party for the same cause—*Lamb, 554*; or been upon a former jury upon the same matter, though between other persons; or arbitrator unless indifferently chosen by either party; or action pending between the juror and either of the parties, or bribing a juror.—1 *Inst.* 157. 4. On account of some crime or misdemeanor affecting the juror's character, as a conviction of treason, felony or perjury; or if he be outlawed; or hath been attainted of false verdict; *præmunire*; or forgery: but it seems that none of the above cited challenges are principal ones, but only to the favor, unless the record of the outlawry, judgment or conviction, be produced, if it be a record of another court; or the term be shewn, if it be a record of the same court.—3 *Bl. Com.* 363.

As to challenges for suspicion of favor, although a juror has not given apparent marks of partiality, yet there may be sufficient reason to suspect he may be more favorable to one side than the other, and this is his reason for a challenge to the favor. The causes of favor are infinite, and in these inducements to suspicion of favor, the question is, "whether the juror can be indifferent as he stands unsworn," for a juror ought to be perfectly impartial to either side.—*Co Lit.* 157. (b).

As the challenge to the *array* must be before any of the jury are sworn, so challenge to the *polls* must be before the particular jurors are sworn.—*Bull. N. P.* 307. After a challenge to the array, the party may change the polls; but after a challenge to the polls there can be no challenge to the array; and he who has more than one cause of challenge against a juror, must take them all at once: but if he challenge a juror, and the cause be found insufficient, he may, nevertheless, afterwards challenge him peremptorily, for perhaps the very challenge may create a prejudice in the mind of the juror so challenged.—3 *Bl. Com.* 363.

A principal cause of challenge being grounded on a manifest presumption of partiality, if it be found true, it unquestionably sets aside the array without any other trial than its being made out to the satisfaction of the court before which the name is returned. But a challenge to the favor, when the partiality is not apparent, must be left to the discretion of the triers.—*Co. Lit.* 158. (a). If the array be challenged, it lies in the discretion of the court to determine *how* it shall be tried;—sometimes it is done by two attorneys; sometimes by two coroners; and sometimes by two of the jury; with this difference—that if the challenge be for kindred in the sheriff, it is most fit to be tried by two of the jurors returned: if the challenge be on account of partiality—then by any other two assigned thereunto by the court.—2 *Hale*, 275. When a challenge is made to the array, for favor, the prosecutor may either confess it or plead to it;—if he plead, the judges assign triers to try the array, who seldom exceed two; who being chosen and sworn, the clerk of the peace declares to them the challenge, and concludes to them thus—"and so the charge is, to inquire whether it be an impartial array or a favourable one"; and if they affirm it, the clerk enters underneath the challenge, "*affirmatur*"; but if the triers find it favorable, then thus—"calumnia vera," or words to that effect.

As to challenges to the polls,—if a juror be challenged before any juror be sworn, two triers are appointed by the court; and if he be found indifferent, and sworn, he and the two triers shall try the next challenge; and if he be tried, and found

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indifferent, then the two first triers shall be discharged; and the two jurors tried, and found indifferent, shall try the rest. But if the prosecutor challenge ten, and the prisoner one, and the twelfth be sworn, then he that remains shall have added to him one chosen by the prosecutor, and another by the prisoner, and they three shall try the challenge; and if six be sworn, and the rest challenged, the court may assign any two of the six sworn, to try the challenges.—2 *Hale*, 275. The truth of the matter alleged, as cause of challenge, must be made out by witnesses to the satisfaction of the triers; also, the juror challenged, may, on a *voir dire*, be asked such questions as do not tend to his disgrace; but a juror may not be asked any questions as tend to discover matters of infamy or shame.—*Salk.* 183. Nor may a juror be asked whether he has expressed an opinion hostile to the party challenging.—*R. v. Edmonds*, 4 B. & A. 471.

## JUSTICES OF THE PEACE.

The Queen's Majesty is, by her office and dignity, royal, the principal conservator of the peace within all her dominions; and may give authority to any other to see the peace kept, and to punish such as break it; hence it is usually called the Queen's peace. Justices of the peace are appointed by the Queen's special commission under the great seal, which appoints them all jointly and separately to keep the peace, and any two or more of them to inquire of and determine felonies and other misdemeanors.

### Qualification.

By 6 V. c. 3, § 1, it is enacted, that all justices of the peace to be appointed in the several districts of this province shall be the most sufficient persons dwelling in the said districts. § 2. No attorney, solicitor, or proctor, shall be a justice of the peace while so practising. § 3. After the 1st January 1843, no person shall be a justice, or act as such, who shall not have in his actual possession, to his own use, a real estate, either in free and common socage, or *en fief*, or *en roture*, or *en franc aleu*, in absolute property or for life, or by *emphyteose* or lease for one or more lives, or originally created for a term not less than twenty-one years, or by usufructuary possession for his life in lands, tenements, or other immovable property, lying and being in this province, of or above the value of £300 currency, over and above all incumbrances, or who shall not, before the 1st day of January 1843, or before he takes upon himself to act as a justice of the peace, take and subscribe the following oath, before some one justice of the peace for the district where he intends to act:

## Justices of the Peace.

I, A. B. do swear, that I truly and *bona fide* have, to and for my own proper use and benefit, such an estate (*specifying the nature of such estate, whether land, and if land, designating the same by its local description, rents, or anything else,*) as doth qualify me to act as justice of the peace for the district of —, according to the true intent and meaning of an act of the provincial parliament, made in the sixth year of the reign of her Majesty Queen Victoria, and intituled, *An Act for the qualification of Justices of the Peace*; and that the same is lying and being (or issuing out of lands, tenements or hereditaments, situate) within the township, parish or seignior of —, (or in the several townships, parishes, or seigniories of —,) (*or as the case may be*). So help me God.

A certificate of which oath having been so taken shall be forthwith deposited by the said justice, who shall have taken the same, at the office of the clerk of the peace, to be filed among the records of the sessions. § 4. Clerk shall, upon demand, deliver copies of such oath to any person on payment of *one shilling*, which copy shall be evidence at law.

§ 5. Any justice acting without-taking and subscribing said oath, or without being qualified according to the act, shall for every offence forfeit £25, one moiety to her Majesty, and the other to the informer; to be recovered, with full costs, in any court of competent jurisdiction in the district, and in such action the proof of qualification shall be upon the *defendant*.

§ 6. If any defendant shall intend to insist upon any lands, tenements or real estate, not mentioned in the oath, as constituting the whole or any part of his qualification to act as a justice at the time of the alleged offence, he shall, at or before the time of pleading, deliver to the plaintiff, or his attorney, notice in writing, specifying such lands, tenements or real estate, and the township or place, and the county or counties where situate, and the plaintiff may thereupon, with leave of the court, discontinue such action, on payment of the defendant's costs. § 7. Provided that, upon trial, no other lands or real estate than such as are mentioned in such oath or notice, shall be insisted upon by the defendant. § 8. When the property mentioned in the oath or notice shall be liable to incumbrances, together with other lands, the property mentioned in the oath or notice shall be deemed liable only so far as the other lands are not sufficient to pay the same. § 9.

When the qualification consists of *rent*, it shall be sufficient to specify so much of the property, out of which such rent is issuing, as shall be sufficient to secure such rent. § 10. In case the plaintiff shall discontinue such action, other than as aforesaid, or judgment be given against him, the defendant shall recover *treble costs*. § 11. After action brought and due

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notice given, the court may stay proceedings in any subsequent action for any *prior* offence: provided such first action be prosecuted with effect. § 12. The court may require the plaintiff to declare upon oath that such action has been brought by him without fraud, and not for the purpose of protecting the defendant from any other action; and if not made to the satisfaction of the court, the action shall be dismissed with costs. § 13. False statements in any oath under this act to be treated as wilful and corrupt perjury. § 14. Actions to be commenced within *six calendar months* after the fact. § 15. Exemptions from the act: The members of her Majesty's legislative council, executive council, judges of the King's Bench or Queen's Bench, vice chancellor, provincial judges of the inferior districts of St. Francis, Gaspe, or any district judge, her Majesty's attorney general, solicitor general, advocate general, and any Queen's counsel. § 16. Sheriffs and coroners disqualified from acting as justices *pro tem*. § 17. Fines and penalties, payable to her Majesty under this act, to remain at the disposal of the *provincial parliament*, for the use of the province.

By 9 V. c. 41, § 1, the Governor in Council is authorised to appoint justices of the peace in remote parts of the province, not being within the constituted limits of any district; and such justices need not be stated residents, nor possess any property qualification. § 2. And may hold and exercise all the powers (but subject to the laws in force) regarding the office of justice of the peace. § 3. Commitments made by them to be to the nearest common gaol. § 4. And appeals against their decisions to the nearest General Quarter Sessions, at any time within six calendar months.

## *Form of the Commission of the Peace.*

Victoria, by the grace of God, of the United Kingdom of Great Britain and Ireland, Queen, defender of the faith, &c.

To — (*the names of the justices being here inserted*), esquires, greeting: KNOW YE, that we have assigned you, jointly and severally, and every one of you, our justices, to keep the peace in our county of —, and to keep, and cause to be kept, all ordinances and statutes for the good of the peace, and for the preservation of the same, and for the quiet rule and government of our people, made in all and singular their articles in our said county, according to the force, form and effect of the same; and to chastise and punish all persons that offend against the form of those ordinances and statutes; and to cause to come before you, or any one of you, all those who to any one or more of our people, concerning their bodies, or the firing of their houses, have used threats, to find security for the peace or their good behaviour towards us and our people; and if they shall refuse to find such security, then them in our prisons, until they shall find such security, to cause to be

## Justices of the Peace.

safely kept. We have also assigned you, and every two or more of you, our justices, to inquire more fully the truth, by the oaths of good and lawful men of the county aforesaid, by whom the truth of the matter may be the better known, of all and all manner of felonies, poisonings, trespasses, forestallings, regratings, engrossings and extortions whatsoever; and of all and singular the crimes and offences of which the justices of the peace may and ought lawfully to inquire, by whomsoever, and after what manner soever, in the said county, had done or perpetrated, or which hereafter shall there happen to be done or attempted. And also, of all those who, in the aforesaid county, in companies, against our peace in disturbance of our people, with armed force have gone or rode, or hereafter shall presume to go or ride. And also, of all those who shall there have lain in wait, or hereafter shall presume to lie in wait, to maim, or cut, or kill our people. And also, of all victuallers, and all and singular other persons who, in the abuse of weights and measures, or in selling victuals, against the form of the ordinances and statutes, or any one of them, therefore made for the common benefit of our province of Canada, and our people thereof, have offended or attempted, or hereafter shall presume, in our said county, to offend or attempt. And also of all sheriffs, bailiffs, stewards, constables, keepers of gaols, and other officers who, in the execution of their offices about the premises, or any of them, have unduly behaved themselves, or hereafter shall presume to behave themselves unduly, or have been, or hereafter shall happen to be, careless, remiss or negligent, in our said county; and of all and singular articles and circumstances, and all other things whatsoever that concern the premises, or any of them, by whomsoever, and after what manner soever, in our aforesaid county, done or perpetrated, or which shall hereafter happen to be done or attempted in what manner soever. And to inspect all indictments whatsoever before you or any of you taken or to be taken, or before others, late our justices of the peace in our aforesaid county made or taken and not yet determined; and to make and continue process thereupon against all and singular the persons so indicted, or who before you hereafter shall happen to be indicted, until they can be taken, surrender themselves, or be outlawed. And to hear and determine all and singular the felonies, poisonings, trespasses, forestallings, regratings, engrossings, extortions, unlawful assemblies and indictments, aforesaid: and all and singular other the premises according to the laws and statutes of our said province of Canada, or form of the ordinances and statutes aforesaid, it has been accustomed or ought to be done to chastise and punish: *Provided always*, that if a case of difficulty upon a determination of any of the premises before you, or any two or more of you, should happen to arise, then let judgment in nowise be given before you or any two or more of you unless in the presence of one of our justices of our court of our bench, or one of our justices appointed to hold the assizes in the said county; and therefore we command you, and every of you, that to keeping the peace, ordinances, and statutes, and all and singular other the premises, you diligently apply yourselves, and that at certain days and places which you, or any such two or more of you as is aforesaid, shall appoint for the purposes, into

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the premises you make inquiries, and all and singular the premises you hear and determine, and perform and fulfil them in the aforesaid form, doing therein what to justice appertains according to the law and custom of Canada; saving to us our amerciements and other things to us thereupon belonging. And we command, by the tenor of these presents, our sheriff of our said county, that at certain days and places which you, or any such two or more of you, shall make known unto him, he cause to come before you, or any such two or more of you as is aforesaid, such and so many good and lawful men of his county, by whom the truth of the matter in the premises shall be the better known and inquired into.

In testimony, &c.

The commission is determinable.—First—By the demise of the crown, that is (by the 1 Anne, c. 8) in six months afterwards. Secondly—By express writ under the great seal.—*Lamb 67.* Thirdly—By writ of *supersedeas*, but this does not totally destroy it, as it may be revived again by another writ, called a *procedendo*. Fourthly—By a new commission, which virtually, though silently, discharges all the former justices that are not included in it, for two commissions cannot subsist at once: and lastly (by 1 Mar. Sess 2, c. 8), by accession to the office of sheriff; and according to some opinions, also, by succeeding to the office of coroner.—*Dalt. c. 3, Bl. Com. 16, Ed. 353.*

## Oath of Office. (BURN.)

Ye shall swear, that as justices of the peace, in the county of —, in all articles in the Queen's commission to you directed, you shall do equal right to the poor and to the rich, after your cunning, wit, and power, and after the laws and customs of the province of Canada, and statutes thereof made; and ye shall not be of counsel of any quarrel hanging before you; and that ye hold your sessions after the form of the statutes thereof made; and the issues, fines, and amerciements, that shall happen to be made, and all forfeitures which shall fall before you, ye shall cause to be entered without any concealment, (or embezzling) and truly send them to the Queen's exchequer; ye shall not let, for gift or other cause, but well and truly you shall do your office of justice of the peace in that behalf; and that you take nothing for your office of justice of the peace to be done, but of the Queen, and fees accustomed, and costs limited by statute; and ye shall not direct, nor cause to be directed, any warrant (*by you to be made*) to the parties, but ye shall direct them to the bailiffs of the said county, or other the Queen's officers or ministers, or other indifferent persons, to do execution thereof.—So help you God.

## Of their Power, Duty, and Office.

First—The commission empowers them to conserve the peace. Second—It empowers any two, or more, to hear and determine all felonies and other offences mentioned in the commission. His jurisdiction is confined to the county for

which he is commissioned. It seems, however, that recognizances and informations, voluntarily taken before him, in any place, are good.—2 *Haw. c. 8, § 28.* But a justice has no jurisdiction, either over the offence or the offender, when the one is committed, and the other abiding, in another county. There are cases, however, where the presence of an offender within the county gives the justice authority, arising out of the necessity of preserving the peace, to proceed against the party offending. Thus, if a man commit a felony in one county and goes into another county, a justice of such other county may take his examination, and the information against him, in that county, and may commit him, and bind over the witnesses to give evidence at the trial; and in short, proceed in all respects as if the offence had been committed within his jurisdiction.—2 *Hale, 51.*

By 24 G. II. c. 55, if any person (against whom a warrant is issued) shall escape into any other county, any justice of that county, upon proof, on oath, of the handwriting of the justice granting the warrant, may indorse his name thereon, which shall be a sufficient authority to the person to whom the warrant is directed, to execute it in such county, and carry the offender before the justice who indorsed the warrant, or some other justice of the county, in case the offence be *bailable*; but if not, then before a justice of the county where the offence was committed.

By statute 1 & 2 F. & M. c. 13, in cases of *manslaughter* and *felony*, justices of the peace are directed to take the *examination* merely, of the prisoner, and certify the same at the next gaol delivery; since which enactment, it has been usual for the justices, in all cases of *great moment*, to commit the prisoner for trial at the next assizes; or gaol delivery; and only in smaller matters—as in cases of *petit larceny*, and offences *not capital*, to bind over to the quarter sessions.—2 *Hale, 46.* But now by 7 W. IV. c. 3, § 2, the courts of *general quarter sessions* are empowered to try every case of *simple larceny* and *accessories* to larceny, except the chairman be not a barrister; in which case, the larceny to be tried must not exceed in value £20. By a subsequent statute, the 4 & 5 V. c. 3, § 18, the judge of the district, being also a justice of the peace for such district, shall preside as chairman at the quarter sessions. The commission also admonishes them, in all cases of difficulty, to let judgment in nowise be given thereon, unless in the presence of *one of the judges* appointed to hold the assizes for the district. It may be further observed, that the offences of *murder* and *manslaughter* are not mentioned in the commission; from which circumstance it may be inferred, that justices of

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the peace could never claim jurisdiction over these offences.—*Fitz & Straund*, 9 H. IV. 24 *Coron.* 457. Where a matter of right or title to property comes in question, the justices of the peace have then no jurisdiction.—*R. v. Barnaby*, 3 *Salk.* 217; 2 *Ld. R.* 900. A justice ought not to act in any case in which he himself is interested, but should cause the party to be convened or carried before some other justice, or desire the aid of some other justice who is present.—*Dalt.* 173. And in all cases where a justice is empowered to hear and determine a matter out of sessions, he should make a *record* in writing, under his hand, of all the matters and proofs; and all convictions should be returned by him to the sessions.—*Dalt. c.* 115; 2 *T. R.* 285.

By 4 & 5 V. c. 12, § 1, justices of the peace are required to make a return of convictions for fines and penalties to the next general quarter sessions, and of the receipt and application of the monies, (§ 2) under the penalty of £20.

The following summary of the practical duties of a justice of the peace, is taken from *Archbold*:

## *The Official Duties of a Justice of the Peace.*

When a complaint is made before a justice of the peace, of any indictable offence having been committed within the county to which his commission extends, it is his duty to have the offender brought before him; and if the offender be not already in custody, the justice may issue a warrant for his apprehension. And a justice of the peace may, in all cases, issue his warrant in the first instance, whether the offence imputed to the party be treason, felony or misdemeanor.—*Bull. v. Conant*, 1 *Brod. & Bing.* 548. It is not, however, very usual, in cases of misdemeanor, to issue a warrant in the first instance, unless in aggravated cases, or where there is a likelihood of the party's absconding, if he be apprised of the complaint being made against him. In ordinary cases, it is usually deemed sufficient to issue a summons in the first instance; and if that be disobeyed, then to issue a warrant.

Before a justice of the peace grants a warrant for the apprehension of an offender, it is prudent in all cases, especially in cases of felony, to examine the person requiring the warrant, or his witnesses, upon oath; and if upon such examination it appears either that the party has actually committed the offence imputed to him, or that there are reasonable grounds to suspect him of having committed it, the justice should grant the warrant.

This examination or information may be taken in the following form:—

## Justices of the Peace.

County of —, } The information and complaint of A. B. of the town-  
to wit. } ship of — in the county of —, yeoman, taken  
upon oath, this — day of — in the year of our Lord 185—, before  
C. D., esquire, one of her Majesty's justices of the peace for the said  
county. The said informant, upon his oath saith, that — [stating the  
facts, as nearly as possible, in the words of the party.]

A. B.

Taken and sworn at — aforesaid, }  
the — day of — 185—. }  
Before C. D. J. P.

### Form of the Summons.

County of —, } To the Constable of the township of — in the said  
to wit. } county.

Whereas A. B. of — in the county aforesaid, labourer, hath this  
day been charged before me, C. D. esq. one of her Majesty's justices of  
the peace for the county aforesaid, on the oath of a credible witness, for  
that he the said A. B. on the — day of — in the year of our Lord  
185—, at the township of — in the county aforesaid, did [*here state  
the offence*]. These are therefore to require you forthwith to summon  
the said A. B. to appear before me, at my dwelling-house, in the town-  
ship of — in the said county, on — next, the — day of —  
instant, at the hour of — in the forenoon of the same day, to answer  
the said charge, and to be further dealt with according to law. And be  
you then there, to certify what you shall have done in the premises.  
Herein fail you not.

Given under my hand and seal, at —, in the county aforesaid,  
the — day of — in the year of our Lord 185—.

C. D., J. P.

This summons should be served upon the party personally,  
if possible; but if, after due diligence used to effect a personal  
service, it be found impracticable, from the party's concealing  
himself, or causing himself to be denied, or the like, the sum-  
mons may, in such case, be left for him at his usual place of  
abode; and if he do not afterwards attend at the time and  
place specified in such summons, the justice, upon being satis-  
fied of these facts, will grant his warrant.

### Form of the Warrant.

County of —, } To the Constable of the Township of —, and all  
to wit. } other Peace Officers in the said County.

Forasmuch as A. B. of —, in the County aforesaid, labourer, hath  
this day been charged before me, C. D. esquire, one of her Majesty's  
Justices of the Peace for the County aforesaid, on the oath of a credible  
witness, for that he the said A. B., on the — day of —, in the year  
of our Lord —, at the Township of —, in the said County, did, &c.  
[*here state the offence*]. These are therefore to command you, in her  
Majesty's name, forthwith to apprehend and bring before me, or some  
other of her Majesty's justices of the peace in and for the said county,

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the body of the said A. B. to answer unto the said charge, and to be further dealt with according to law. Herein fail you not.

Given under my hand and seal, at —, in the county aforesaid, the — day of — in the year of our Lord 185—.

C. D., J. P.

The warrant may be directed to any person; but it is usually directed to the constable of the township in which it is to be executed; for he alone can be punished for neglecting or refusing to execute it. It is not returnable at any particular time, but remains in force until it is executed.—*Mayhew v. Parker*, 8 T. R. 110.

## Form of the Indorsement.

County of —, } Forasmuch as proof, upon oath, hath been made  
to wit. } before me, E. F., one of her Majesty's justices of  
the peace for the said county, that the name C. D. to the within war-  
rant subscribed, is of the handwriting of the justice of the peace within  
mentioned: I do therefore hereby authorise — who bringeth to me  
this warrant, and all other persons to whom the said warrant was  
originally directed, to execute the same within the said county of —.

Given under my hand and seal, at —, in the said county of —,  
the — day of — in the year of our Lord 185—.

E. F., J. P.

As soon as the party accused is brought before the justice, the latter calls upon the witnesses for the prosecution to give their evidence, and administers to each the following oath:

## Oath.

You shall true answer make to all such questions as shall be demanded of you. So help you God.

The justice then proceeds to examine the witness, and takes down his deposition in writing. The following is the form of the

## Deposition of a Witness.

County of —, } The examination of C. D. of the township of —,  
to wit. } laborer, taken on oath this — day of —, in  
the year of our Lord 185—, before me, J. P., one of her Majesty's  
justices of the peace for the county aforesaid, in the presence and hear-  
ing of A. B., charged this day before me, the said justice, for that he  
the said A. B. on — at — (*&c. describing the nature of the  
charge, as in the summons or warrant*). This deponent saith, that  
&c. (*here insert the statement of the witness, as nearly as possible in  
his own words; then read the same over to him; ask him if it is cor-  
rectly taken down; and get him to subscribe his name.*)

Taken before me, the day and }  
year above mentioned. }

C. D., J. P.

If from the absence of witnesses, or from any other reason-  
able cause, it become necessary or advisable to defer the

examination for a time, the justice may do so. If the accused be in the custody of the constable, under the warrant, and it be intended to resume the examination on the next day, or within some other short period, a mere verbal order to the constable to bring the prisoner before the justice at the time appointed will be sufficient; and the prisoner remains in custody under the warrant, in the meantime.—2 *Hale, H. 120.* But if it be necessary to remand him for any considerable period, it may be prudent to commit him to prison in the meantime, under the following

*Commitment for Re-examination.*

County of ———, C. D., esquire, one of her Majesty's justices of the peace for the said county, to the constable of the township of ——— in the said county; and to the keeper of the common gaol at ———, in the said county.

These are to command you, the said constable, in her Majesty's name, forthwith to convey and deliver into the custody of the said keeper of the said common gaol, the body of A. B., charged this day before me, the said justice, on the oath of A. O., on suspicion that he the said A. B. (*on ——— at ——— &c., describing the offence*); but inasmuch as E. F., a material and necessary witness against the said A. B., resides at ———, a distance of ——— miles from the said dwelling-house of the said A. O., (*or as the case may be*), and he the said A. O. hath not been able to procure the attendance of the said E. F., but will use his best endeavor to do so on the ——— day of ——— instant; you, the said keeper, are hereby required to receive the said A. B. into your custody, in the said common gaol, until ——— the ——— day of ——— instant, when you are hereby required to bring the said A. B. before me at ——— in the said county, or before such others of her Majesty's justices of the peace for the said county as shall be then and there present, to be re-examined, and further dealt with according to law. Herein fail you not.

Given under my hand and seal, the ——— day of ——— in the year of our Lord 185—. C. D., J. P.

Upon the day appointed by the commitment, the keeper of the prison will cause the accused to be brought before the committing magistrate, who will then proceed in the examination of the witnesses, in the manner already mentioned.

If, upon the prisoner being remanded, or indeed at any time before the examination is finally closed, the justice be apprised that any person who can give material evidence against the prisoner will not attend voluntarily before him, he may grant the following

*\*Summons of a Witness.*

County of ———, } To the constable of the township of ——— in the said  
to wit. } county.  
Whereas information hath been made before me, C. D., esquire, one

other Majesty's justices of the peace for the said county, that A. B., late of — in the said county, laborer (on the — day of — in the year of our Lord 185—, at, &c. describing the nature of the charge, as in a warrant or commitment); and that E. F. of — in the said county, yeoman, is a material and necessary witness to be examined concerning the same: These are therefore to require you to summon the said E. F. to appear before me at — in the said county, on the — day of — instant, at the hour of — o'clock in the — noon of the same day, to testify his knowledge concerning the premises. Herein fail you not.

Given under my hand and seal, the — day of — in the year of our Lord 185—, C. D., J. P.

A copy of this summons should, in strictness, be served personally on the witness, and the original at the same time shewn to him. If the witness refuse to attend, upon being summoned, a warrant may be then issued to compel him.

## Warrant for a Witness.

County of —, } To the Constable of — in the county —  
to wit.

Whereas it hath been made appear to me, J. C. esquire, one of her Majesty's justices of the peace in and for the county —, upon the oath of A. O. that he the said A. O. was feloniously robbed of [state the facts] and that he has cause to believe that C. D. of — is a material witness to prove by whom the said robbery was committed: and whereas it hath been duly proved on the oath of K. L. constable of — that the said C. D. was duly summoned to appear before me, this day, at the hour of — in the forenoon, to be examined touching the said robbery, but the said C. D. hath neglected and refused, and doth neglect and refuse to appear before me, in pursuance of the said summons: These are therefore to require you to cause the said C. D. forthwith to come before me, and give such evidence and information as he knoweth concerning the said offence, that such further proceedings may be had therein as the law doth direct.

Given under my hand and seal, &c.

The examination of the witnesses being closed, if it appear that a case, even of suspicion, be made out against the accused, the justice then asks him if he would wish to say anything in his own behalf;—if he decline doing so, he should not in any manner be pressed, or interrogated further on the subject, and he should upon no account be induced to say any thing upon a promise or hope, or even the slightest intimation being held out to him that it will be better or worse for him; because his confession, under such circumstances, would be afterwards inadmissible in evidence against him: but if he say anything voluntarily, the justice must take it down in writing; indeed, whether he says or declines to say anything in his own behalf, the justice, in prudence, should take down in

writing what passes on the occasion, in order that the judge, at the trial, may see that the justice has done his duty in this respect; and this seems now to be imperative on the justices by statute 4 & 5 V., c. 24. s. 2, by which statute the examination must be taken before *two* justices, if the prisoner is to be bailed; but if intended that he should be committed to prison, then it may be taken before *one* justice only. The examination must not be upon oath, and may be in the following form.

*The Examination of the Accused before two Justices.*

County of —, } The examination of A. B. — labourer, taken this  
to wit, } — day of — in the year of our Lord 185 —  
before us, C. D and E. F. esquires, two of her Majesty's justices of the  
peace for the county aforesaid. The said A. B. being charged before us,  
the said justices, on oath of — of — yeoman, for that he the said  
A. B. on — at — &c. [*describing the offence as in the warrant or  
commitment*] upon his examination now taken before us, saith (I am  
not guilty of the offence with which I am charged—I bought the goods  
in question for five shillings, from a man whom I met on the road lead-  
ing to — on the day before I was taken—I do not know the man's  
name, or where he lives, &c. [*stating what the accused says, as nearly  
as possible in the words he uses*] or if the accused declines saying any  
thing in his behalf, the examination, after stating the offence with which  
the party is charged as above, may proceed thus:—And the witnesses  
against the said A. B. being examined in his presence, the said A. B.  
is now asked by me, if he wish to say anything in his own behalf,  
whereupon the said A. B. saith (I shall not say anything at present,  
but shall reserve what I have to say for the day of my trial,) [*stating  
whatever the prisoner may say, as nearly as possible in the words he  
uses*].

Taken before us the day and }  
year above mentioned. }

A. B.

C. D.

The accused should be asked to sign his examination, but if he refuse to do so, still this will not prevent what he has said upon his examination from being given in evidence against him, if necessary, at the trial.—*R. v. Lamb, 2 Leach, 625.*

If, upon considering the evidence which has been given on the part of the prosecution, together with the examination of the accused, there appear to be *no case* made out against him, the justice should discharge him. But if the evidence against the accused be such, that the justice thinks it should be submitted to a jury to consider and decide upon it, it will then be his duty to bind the prosecutor or party grieved in a recognizance to prosecute and give evidence, and each of the witnesses in a recognizance to give evidence. This is done by stating to the prosecutor or witness the substance of the re-



cognizance and condition, stating it however in the second person, "*you acknowledge yourself to owe to our sovereign lady the Queen, &c.*" It is only the recognizance of the prosecutor or witness merely that can be required: the magistrate cannot compel either to find sureties. The only seeming exception to this rule is the case of a married woman and a minor or infant under the age of twenty-one years, neither of whom can legally enter into a recognizance, but must procure some other person to become bound for him or her. If the prosecutor or witness refuse to enter into the recognizance; or in the case of a married woman or a minor, if either of them should neglect to procure a surety to enter into a recognizance for them, the magistrate may commit them until the sessions, &c., or until such recognizance be given;—*Bennet v. Watson*, 3 M. & S. 1—a power, however, which should not be exercised without the greatest caution.

It is further right to consider whether the case be a proper one for the sessions or the *assizes*, and bind the prosecutor and witnesses accordingly. The following are the forms of the recognizances.

## Recognizance to Prosecute and give Evidence.

County of —, } Be it remembered, that on the — day of — in  
to wit. } the — year of the reign of Queen Victoria, A.  
B., of — in the said county, yeoman, personally came before me,  
C. D., one of her Majesty's justices of the peace for the said county,  
and acknowledged himself to owe to our sovereign lady the Queen, the  
sum of — of good and lawful money of Canada, to be made and  
levied of his goods and chattels, lands and tenements, to the use of our  
said lady the Queen, her heirs and successors, if he the said A. B. shall  
fail in the condition hereunder written.

Whereas one E. F., late of —, was this day brought before the  
justice above mentioned, by the above bounden A. B., and was by him  
charged, for that the said E. F. on — at — &c. (*describing the  
offence as in the warrant*). Now therefore, the condition of the above  
written recognizance is such, that if he the said A. B. shall and do  
appear at the next — (*general quarter sessions of the peace, or  
general gaol delivery*) to be holden in and for the said county, and then  
and there prefer one bill of indictment for the said felony, against the  
said E. F., and shall then also give evidence there concerning the  
same, as well to the grand jurors that shall then enquire of the said  
felony, as also to them that shall pass upon the trial of the said E. F.,  
that then the said recognizance to be void, or else to stand in full force  
and virtue.

Taken and acknowledged before —

C. D., J. P.

## Recognizance to give Evidence.

County of —, } Be it remembered, &c. (*the same form as before*).  
to wit. } The condition of the above written recognizance is

such, that if the above bounden G. H. shall personally appear at the next — (*general quarter sessions of the peace, or general gaol delivery*) to be holden at — in and for the said county, and then and there give such evidence as he knoweth, upon a bill of indictment, to be exhibited by A. B., of —, yeoman, to the grand jury, against E. F., late of —, labourer, for (*feloniously stealing —, the property of the said A. B. [or stating shortly the offence]*) and in case the said bill be found a true bill, then if the said G. H. shall then and there give evidence to the jurors that shall pass upon the trial of the said E. F. upon the said bill of indictment, and not depart thence without leave of the court, then this recognizance to be void, or else to remain in its full force.

If, in the opinion of the justice, the felony is clearly made out against the prisoner, he should upon no account be admitted to bail: but if the justice entertain a reasonable doubt of his guilt, then under the 4 & 5 V. c. 24, § 2, the prisoner, even in cases of felony, (excepting murder) may be admitted to bail; but in such case the act expressly requires, that if there be but one magistrate present, he shall be detained until he be taken before *two* justices, who are by the said act empowered to admit the prisoner to bail. It would therefore be wrong for any *one* justice, in a case of felony, to admit to bail under any circumstances; but by § 3 of the same act, one justice is competent to bail in cases of misdemeanor: under this act the prisoner is entitled to cross-examine the witnesses against him, but the justice or justices are not obliged to hear any evidence on his behalf, unless it shall appear to them to be meet and conducive to the ends of justice to hear the same.

If the two justices should determine that the case is a proper one in which to receive bail for the prisoner's appearance, the amount of such bail will of course be left to the discretion of the justices, who will take care that a sufficient amount is required, from good and sufficient sureties, to insure the appearance of the accused; and if the prisoner be unable to procure such bail, he should then be committed by *two* justices to gaol until he find such bail, or be otherwise delivered by due course of law. On the other hand, if the case be clearly made out against the prisoner, and the justice or justices entertain no reasonable degree of doubt as to the prisoner's guilt, the prisoner should then be committed and not admitted to bail. The 4 & 5 V. c. 24, also requires that the justice or justices shall subscribe all such examinations, informations, bailments and recognizances, and deliver or cause to be delivered the same to the proper officer of the court in which the trial is to be; before or at the opening of the court.

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## Warrant of Commitment.

County of —, } J. P., esquire, and C. D., esquire, two of her  
to wit. } Majesty's Justices of the Peace for the said  
County, to the Constable of —, in the said County, and to the Keeper  
of the Common Gaol at —, in the said County:—

These are to command you the said Constable, in her Majesty's name, forthwith to convey and deliver into the custody of the said Keeper of the said Common Gaol, the body of E. F., charged this day before us, the said Justices, on the oath of A. B., of —, farmer, and others, for that the said E. F., [*on the — day of —, in the year of our Lord —, at —, in the said County, ten pieces of the current gold coin of this province called sovereigns, one woollen cloth coat, and one linen shirt, of the monies, goods and chattels of the said A. B., feloniously did steal, take and carry away*], and you the said Keeper are hereby required to receive the said E. F. into your custody, in the same Common Gaol, and him there safely to keep until he shall be thence delivered by due course of law, [or if it be determined to admit him to bail, then say, "until he shall enter into recognizance, with two sufficient sureties, himself in — pounds, and each of the said sureties in — pounds each, to be taken before us, or any two of her Majesty's Justices of the Peace for the said County, for his appearance before the Justices at the next General Quarter Sessions of the Peace or General Gaol Delivery, to be holden in and for the said County, then and there to answer to our said sovereign lady the Queen, for and concerning the felony aforesaid,"] (or until he shall be thence delivered by due course of law). Herein fail you not.

Given under our hands and seals the — day of —, in the year of our Lord 18—.

## The Recognizance of Bail.

County of —, } Be it remembered, that on the — day of —, in  
to wit. } the — year of the reign of Queen Victoria, E. F.  
of —, yeoman, G. H. of —, yeoman, and J. K. of — yeoman,  
came before us, J. P. and R. L., esquires, two of her Majesty's Justices  
of the Peace for the said County, and severally acknowledged them-  
selves to owe to our said lady the Queen; that is to say, the said E. F.  
the sum of — pounds, and the said G. H. and J. K. the sum of —  
pounds each, to be respectively levied of their lands and tenements,  
goods and chattels, if the said E. F. shall make default in the perfor-  
mance of the condition-endorsed (or hereunder written).

The condition of this recognizance is such, that if the within (or above)  
bounden E. F. shall personally appear (at the next General Quarter  
Sessions of the Peace or General Gaol Delivery) to be holden in and for  
the said County, then and there to answer to our said sovereign lady the  
Queen, for and concerning the felonious taking and stealing of —, the  
property of A. B. of —, yeoman, [*describing the case shortly*], with  
the suspicion whereof the said E. F. stands charged before us the said  
Justices, and to do and receive what shall by the Court be then and there  
enjoined him, and shall not depart the Court without leave, then the  
within (or above) written recognizance shall be void.

Upon the recognizance being taken, if the defendant have appeared voluntarily, or if he be in custody of the Constable, the Justice discharges him as of course; but if he be in prison the Justices, upon application, issue the following

*Warrant of Deliverance.*

County of —, } J. P., esquire, and R. L., esquire, two of her  
to wit. } Majesty's Justices of the Peace for the said  
County, to the Keeper of her Majesty's Gaol at —, in the said County.

Forasmuch as A. B., late of —, in the said County, labourer, hath before us found sufficient sureties for his appearance before the Justices at the next General Quarter Sessions of the Peace, (or before her Majesty's Justices at the next General Gaol Delivery), to be holden in and for the said County, to answer to our sovereign lady the Queen for and concerning the [*describing the offence shortly, as in the recognizance*], for the suspicion whereof he was taken and committed to your custody at the said gaol; We therefore hereby command you, on behalf of our sovereign lady the Queen, that if the said A. B. do remain in your custody for the said cause, and for no other, you shall forbear to detain him any longer, but that you deliver him thence and suffer him to go at large, and that upon the pain that will thereon ensue.

Given under our hands and seals at —, in the County aforesaid, the — day of —, 18—.

It is in the discretion of a magistrate, when he takes the examination of a prisoner, whether he will allow the presence of an attorney or other legal adviser, either for the prisoner or prosecutor: it cannot in either case be claimed as a matter of right, as information might thereby be obtained and conveyed which would defeat the course of justice. In the case, however, of a trial or summary conviction, before a magistrate, there is a difference; in the latter case, it is reasonable that a party upon his trial should have professional assistance.—*Cor v. Coleridge*, 1 B. & C. 37; *R. v. Barron*, 3 B. & A. 432; *R. v. Js. of Staffordshire*, 1 Chit. Rep. 217.

It seems that a magistrate may commit a party for a contempt, who makes use of scandalous and insulting language to him whilst in the execution of his office; but as such a commitment is by way of punishment, it must be made by warrant, in writing.—*Mayhew v. Locke*, 7; *Taurit*. 63; *Marsh*. 377; *R. v. Revel*, 1 Str. 420; and must not be a general one "till the party is discharged by due course of law," but must be for a time certain.—*R. v. James*, 5 B. & A. 894. The better course for a magistrate to adopt in such cases is, first, to require the offender to find sureties for his good behaviour, and in default of his doing so, then to commit him until the next quarter sessions, unless he sooner find such

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sureties, and enter also into his own recognizance for his good behaviour.—*R. v. Langley*, 2 *Ld. R.* 10; 30 *per Holt. C. J.*

See also title "Contempt, p. 198."

A justice of the peace is empowered, in all matters properly brought before him in his judicial character, or by particular statutes, to administer an oath; but it is very questionable how far he is justifiable in taking a voluntary affidavit, in any extra judicial matter, as is now too frequent a practice upon every petty occasion; for it is more than possible that by such idle oaths, a man may frequently in *foro conscientie* incur the guilt, and at the same time evade the penalties of perjury.—4 *Bl. Com.* 137. Lord Cooke, indeed, says, that it is a high contempt to administer an oath not warranted by law, and that the offence is punishable by fine and imprisonment.—3 *Inst.* 165; and in a case, Lord Kenyon said, that "he did not know but a magistrate subjected himself to a criminal information for taking a voluntary extra-judicial oath."—*Wm. Prec.* 14; 3 *Burns J.* 588.

#### *Of their Liability, Indemnity, Protection.*

First—As every person ought to be heard in his own defence before he is convicted, if a justice therefore, in the case of a summary conviction, proceed against a party without previously summoning him to appear, it is such a misdemeanor as will render him liable to a criminal information.—1 *Salk.* 181. If a justice also will not, on complaint to him made, execute the duties of his office as a magistrate, or is guilty of any wilful misconduct, the party grieved may not only move for an information, but may also apply to put him out of the commission.—*Crompt.* 7; 2 *Atk.* 2; 1 *T. R.* 692; 7 *T. R.* 374. Where a justice, however, refuses to proceed in any matter which he is authorised or required to do by act of parliament, and his refusal does not arise from any corrupt or improper motive, the proper course for the party complaining is to move for a *mandamus* to compel him to proceed.—*R. v. Todd*, 1 *Str.* 530. Where a criminal information is applied for against a magistrate, the question for the court is not whether the act done be found on investigation to be strictly right or not, but whether it proceeded from any unjust, oppressive or corrupt motive, or from mistake or error only: in the latter case, the court will not grant an information, but leave the party complaining to his remedy by action or indictment; for it must be a case of clear and apparent partiality, or wilful misbehaviour, to induce the court to proceed by information against a magistrate.—*R. v. Barron*, 3 *B. & A.* 432; 1 *Burr.* 556; 2 *Burr.* 1162. The party complaining, also, must make a prompt

application to the court, otherwise this proceeding will not be entertained: thus, where the facts complained of against a magistrate took place twelve months before hand, an information was refused.—*R. v. Bishop*, 5 B. & A. 612. Neither is a justice liable to be punished both ways—that is, criminally and civilly; for before the court will grant an information, they will require the party to relinquish his *civil* action, if any such is commenced—*R. v. Fielding*, 2 Burr. 719; and so in the case of an indictment, the attorney general, on application, will grant a *nolle prosequi*, if it appear to him a prosecutor is determined to carry on a *civil* action at the same time.—*Id.* When a justice is convicted on an information, he must appear in person to receive judgment.—*R. v. Harwood*, 2 Str. 1088; 3 Burr. 1716, 1786. A justice of the peace, however, is upon all occasions strongly protected by the law in the just execution of his office; for, though the judgment be wrong, yet if his intention is pure, the Court of King's Bench will never interfere by way of punishment.—*R. v. Young*, 1 Burr. 556; *R. v. Cox*, 2 Burr. 785. Nor will the court even grant a *mandamus* against him, to command him to do what *may* render him liable to an action.—*R. v. Dayrell*, 1 B. & C. 485. Where a magistrate, however, in committing a party for further examination, commits him for an *unreasonable* length of time, this has been lately determined to be altogether a void commitment, and to render him liable to an action of trespass.—*Davis v. Copper*, K. B. Mich. T. 1829.

Calling a justice of the peace “a rascal, a villain, and a liar,” when spoken of him as a justice, are *actionable*, as well as *indictable*—2 Str. 617, 1168; 2 Ld. R. 1396; *R. v. Revil*, 1 Str. 420. With respect to actions against justices of the peace, the law affords them ample protection against the claims of a vindictive or litigious party; thus by 24 G. II. c. 44, no writ can be issued against a magistrate, for anything done by him in the execution of his office, until notice in writing of the intended process shall be delivered to him, or left at his usual place of abode, by the attorney or agent for the party who intends to sue, at least one calendar month before the suing out or serving the same, in which notice must be clearly expressed the cause of action, and on the back, the name of the attorney or agent indorsed, with the place of his abode.

See further on this subject, title “*Action*.” p. 9.

\*By 2 W. c. 4, entitled, “An act to facilitate summary proceedings before justices of the peace, and to afford to such justices reasonable protection in the discharge of their duty;” it is enacted by § 2, That in *all* cases in which *two* or more justices are required to hear and determine any complaint, one

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justice shall be competent to receive the information and issue the summons, to appear before *two* or more justices, and after the adjudication by any *two* justices, all subsequent proceedings respecting the penalty, fine, imprisonment, costs or other matter or thing may be enforced by *either* of the said justices, or by *any other* justice for the same district, having before him a record of such conviction, certified by the justice or justices who adjudicated. §3. Convictions appealed from and affirmed, or not appealed from, shall not be set aside for want of form.

§ 4. And whereas in cases of summary conviction, or the proceedings thereon, it may sometimes happen that justices of the peace may by some irregularity or defect in the form of their proceedings, render themselves liable to actions of trespass, where there was no disposition on their part to oppress the party, and where the guilt of the offender may have been manifest; and it is reasonable to protect justices wherever it shall appear that their proceedings have been grounded upon good causes, and where they have acted without malice, it is enacted, that in all actions against justices on account of any conviction, or for or by reason of any act, matter or thing, done or commanded to be done by such justice or justices for the levying of any penalty, apprehending of any party, or otherwise carrying such conviction into effect, in case such conviction shall be quashed, the plaintiff in such action, besides the penalty levied, if any, shall not be entitled to more than *one shilling* damages, nor any costs of suit, unless it shall be especially alleged in the declaration, that such acts were done maliciously and without any reasonable or probable cause. § 5. And such plaintiff shall not recover any penalty levied, nor any damages or costs, in case such justice shall prove at the trial, that such plaintiff was guilty of the offence whereof he was convicted, or on account of which he was apprehended, or had suffered, and has undergone, no greater punishment than assigned by law.

\*By the 4 W. IV. c. 17, the following fees and no more are authorised to be taken by justices of the peace, or by their clerks:

	£	s.	d.
For an information and warrant for apprehension for an assault or other misdemeanor .....	0	3	9
For discharge of the defendant .....	0	1	3
For information and warrant for surety of the pence .....	0	3	0
For discharge of the defendant .....	0	1	3
For every recognizance .....	0	2	6
For every information, besides that of the complainant .....	0	1	3
For warrant of commitment .....	0	2	6

And for costs in cases of conviction under penal statutes, when the fees are not expressly prescribed by any statute :

	£	s.	d.
For information and warrant or summons.....	0	3	9
For every subpoena to a witness.....	0	0	6
For every conviction under a penal statute.....	0	7	6
For warrant to levy a penalty.....	0	2	6
For making up every record of conviction, when the same is required to be returned to the sessions or on certiorari....	0	10	0
For every certificate of dismissal of any charge under the act providing for the summary punishment of petty trespasses and other offences.....	0	2	6
And in cases before a single justice, where the penalty is no higher than £5, for the conviction.....	0	2	6
And for the warrant to levy.....	0	2	6

NOTE.—No fees are to be taken in cases of felony.

*Commitment for insulting a Justice of the Peace in the execution of his office.*

County of —, } To the Constable of —, and to the keeper of the  
to wit. } common gaol at —.

Whereas A. B. being personally present this day at —, before me, J. C., esq., one of her Majesty's justices of the peace in and for the county of —, to answer and make his defence to a certain information before me exhibited against him [*state the offence*], and being so personally present before me, hath this day been guilty of divers gross insults and contemptuous behaviour to me, the said justice, then being in the actual execution of my office as such justice of the peace as aforesaid, by accusing me of partiality and injustice in the execution of my office [*or as the case may be*]. And whereas the said A. B., in consequence of such his insolent and contemptuous behaviour, is now here, by me, the said justice, required to find sureties for his good behaviour—that is to say, two sufficient sureties to become bound with him in a recognizance in the sum of — each, conditioned for the personal appearance of the said A. B. at the next General Quarter Sessions of the peace to be holden in and for the said county, and that in the meantime he should be of good behaviour; but the said A. B. hath refused to find sureties and to become bound in such recognizance as aforesaid; these are therefore to command you, the constable of —, to convey and deliver the said A. B. into the custody of the keeper of the common gaol at —, in the said county, together with this my warrant; and I hereby command you, the said keeper, to receive the said A. B. into your custody in the said common gaol, and him there safely to keep until he find such sureties and enter into such recognizance, or be from thence otherwise delivered in due course of law. Given under my hand and seal this — day of —, in the year of our Lord 186—.

*Notice of Motion for leave to file a Criminal Information against a Justice.*

To C. A. Esquire, one of her Majesty's justices of the peace in and for the county of —.

Take notice, that I shall move her Majesty's Court of Queen's Bench,

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at Toronto, on the — day of next — term, or so soon after as counsel can be heard, for leave to file a criminal information against you in the crown office, for misconduct in your office of justice of the peace, in illegally and without any reasonable or probable cause whatsoever, causing me to be apprehended, on the — day of — last, and to be committed to the common gaol at — in the said county, and there to be detained for a long space of time, to wit, for the space of — days, on a supposed charge of —. Dated, &c.

Yours, &c.

A. B.

## KIDNAPPING

Is the forcible abduction or stealing away of a man, woman or child, from their own country, and sending them into another—*Bl. Com. p. 218; 15 Ed.*; and is punishable at common law with fine, imprisonment and pillory—*1b.*; and also by statute 11 & 12 Wm. III. c. 7, though principally intended against pirates, it is enacted "that if any captain of a merchant vessel shall (during his being abroad) force any person on shore, or wilfully leave him behind, or refuse to bring home all such men as be carried out, if able and desirous to return, he shall suffer three months imprisonment." Upon this subject the learned commentator on *Blackstone (Christian)* has this note: Where a child is stolen for the sake of its clothes, it is the same species of felony as if the clothes were stolen without the child; but, without referring it to that class of offences, stealing a child from its parents is an act so shocking and horrid, that it would be considered the highest misdemeanor, punishable by fine, imprisonment and pillory, upon the same principle on which it was decided to be a misdemeanor to steal a dead body from a grave. A special provision, however, is now made against this offence, by 4 & 5 Vic. c. 27, § 21, for which see title "Child Stealing," p. 145.

## KING'S BENCH, or QUEEN'S BENCH.

The jurisdiction of this court is very high and transcendent. It keeps all inferior jurisdictions within the bounds of their authority, and may either remove their proceedings to be determined there, or prohibit their progress in the court below. It superintends all civil corporations; it commands magistrates and others to do what their duty requires, in every case where there is no specific remedy; it protects the liberty of the subject by speedy and summary interposition, and is empowered to find redress in every matter of inquiry.—*2 Haw. c. 8, § 3.* It takes cognizance both of civil and criminal causes. On the crown side, its jurisdiction extends to all manner of offences, from high treason down to the most trivial misdemeanor, or

breach of the peace, and it may award process into any part of the province. Into this court, also, indictments from all inferior courts may be removed, by writ of certiorari, and tried either at bar, or by writ of *nisi prius*, at the assizes, for the district out of which the indictment is brought.

In most cases of misdemeanor, it is in the discretion of the Court of King's Bench, to inflict such fine and imprisonment, and even infamous punishment, (not prohibited by statute) on offenders, as the nature of the crime requires; and the court may commit to any prison in the district.—2 *Haw. c. 5, § 5.*

The Court of King's Bench, in this province, was created and established by statute 34 G. III. c. 2, and the change of the style of the court to the "Queen's Bench," was effected by the \*2 V. c. 1.

### KING'S EVIDENCE

Is obtained by the admission of an accomplice against his fellows upon an implied confidence, which the judges of gaol delivery have usually countenanced and adopted, that if such accomplice makes a full and complete discovery of that and of all other felonies, to which he is examined by the magistrate, and afterwards gives his evidence without prevarication or fraud, he shall not himself be prosecuted.—4 *Bl. Com.* 331. The discretionary power, however, thus exercised by justices of the peace, is founded in practice only, and cannot control the authority of the court of gaol delivery, and exempt the accomplice, at all events, from being prosecuted; for a motion must be made to a judge for leave to admit an accomplice to be a witness, though the judge, unless he should see some particular reason to the contrary, will prefer the one to whom this encouragement has been held out by the justice of peace.—*Ibid.* Such admission to be a witness, does not *entitle* the accomplice to a pardon of right, but amounts merely to a promise of a recommendation to mercy, upon condition, that the accomplice makes a full and fair disclosure of all the circumstances of the crime for which the other prisoners are tried, and in which he has been concerned in concert with them: upon failure, on his part, of this condition, he forfeits all claims to protection.—*R. v. Rudd, Cowp.* 331; 1 *Leach*, 115. Thus, where upon a trial before *Buller, J.* at York (England), the accomplice (who was admitted a witness) denied in his evidence, all that he had before confessed, upon which the prisoner was acquitted—the judge ordered an indictment to be preferred against the accomplice for the same crime; and upon his previous confession, and other circumstances, he was convicted and executed.—*Bl.* 331, *note 6.* And the claim of an accomplice does not extend be-

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yond those offences in which he has been connected with the prisoner, and concerning which he has previously undergone an examination.—*R. v. Duce*, 1 Chetw. ; *Burn*. 212.

Until the trial, the accomplice so to be admitted as king's evidence, will, of course, be kept in custody, as well as the principal.

See also further on this subject, title "Approvers," ante p. 42.

### KING'S STORES.

By 33 El. c. 4, 22 C. II. c. 5, if any person having the charge or custody of any of the king's armour, ordnance, ammunition, shot, powder, or habiliments of war, or of any victuals provided for victualling the army, shall for lucre or gain embezzle, purloin, or convey away the same, to the value of 20s. or shall feloniously steal or embezzle any of her Majesty's sails, cordage, or any other of her Majesty's naval stores, to the value of 20s. he shall, (on prosecution within a year) be adjudged guilty of felony.

By 9 & 10 W. c. 41, 17 G. II. c. 40, § 10, 11, no person, other than persons authorised, by contracting with her Majesty's officers, shall make any stores of war or naval stores, with the Queen's mark, that is cordage of three inches and upwards, with a white thread laid the contrary way; or any canvas with a blue streak in the middle; or any other stores with the broad arrow, on pain of forfeiting the same, and £100, with costs, (on conviction at the assizes or sessions), half to the Queen and half to the informer.

By 9 & 10 W. c. 41, any such person, in whose custody such goods or stores, so marked, (or any timber, thick stuff, or plank, marked with the broad arrow, 9 G. 31 c. 8 § 3,) shall be found, shall forfeit the same and £200, with costs, in like manner, and be imprisoned till paid, unless he shall upon trial produce a certificate from the principal officers of the navy, expressing the quantity and on what occasion he came by them.

By 9 G. c. 8, § 4, the court may mitigate the penalty, and as they see cause, commit the offender to gaol till payment, or may punish him corporally by public whipping, or hard labour for six months, or a less time.

By 12 G. III. c. 24, § 1, if any person within this realm, or in any of the islands, countries, forts, or places thereunto belonging, shall wilfully and maliciously set on fire, burn or destroy, (or aid therein) any of her Majesty's ships of war, whether on float, or building in any dock-yard, rope-yard, victualling office or buildings, belonging thereto, or any military or naval stores therein deposited, he shall be adjudged guilty of felony.

The provisions of this act are by the \* 3 W. IV. c. 4, confirmed, in relation to this province.

## LANDLORD AND TENANT.

### *Distress for Rent in Arrear.*

First—Distress for rent, must be for rent in arrear; therefore it may not be made on the same day on which the rent becomes due; for if the rent is paid in any part of that day whilst a man can see to count money the payment is good. Second—It must not after tender of payment.—*Inst.* 107. Third—Persons having rent in arrear upon any lease determined, may distrain on such arrears after the determination of the lease, in the same manner as if it had not been determined; provided that such distress be made within six calendar months after the determination of such lease, and during the continuance of such landlord's title or interest, and during the possession of the tenant from whom such arrears became due.—8 An. c. 14, § 6, 7. Before the statute of the 17 C. II. c. 7, in case a distress was too little, where sufficient distress was to be had, a man could not distrain again, be the demand never so great.—*Mo.* 7; *Com.* 546. But now, by said statute, in all cases where the value of the cattle distrained shall not be found to be of the amount distrained for, the party to whom such arrears were due, his executors or administrators, may distrain again for the residue. § 4. So, in like manner, where the distress is made by virtue of the warrant of a justice of the peace, in nature of an execution: and the disinction appears to be this,—where a person hath an entire duty, he shall not split the entire sum, and distrain for part of it at one time, and for part of it at another time; and so *toties quoties* for several times, for that is great oppression; but if a man seizeth for the *whole* sum that is due to him, and only *mistakes* the value of the goods seized, there is no reason why he should not complete his execution, by making a further seizure.—*Burrow, Mansfield*, 589. If any distress and sale shall be made for rent in arrear and due, when none is in truth due, the owner shall recover double value, with full costs.—2 W. sess. 1, c. 5, § 5.

### *What Goods may be Distrained, and what not.*

Distress for rent must be of a thing whereof a valuable property is in some body; and therefore dogs, bucks, does, conies, and the like, that are *feræ nature*, cannot be distrained.—1 *Inst.* 47. Although it be of valuable property, as a horse, yet, if when a man or woman is riding on him, or an axe in a man's hand, cutting of wood, and the like, they are for that time privileged, and cannot be distrained.—1 *Inst.* 47. And it hath been

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held, that the horses joined to a cart, with a man upon it, cannot be distrained for rent (although they may for damage feasant), but both cart and horses may, if the man be not upon the cart. — *Vent. 36.* Valuable things shall not be distrained for rent, for the benefit and maintenance of trades, which by consequence are for the commonwealth, and are there by the authority of law, as the horse in a smith's shop; nor a horse in a hoftry; nor the materials in a weaver's shop for making cloth; nor cloth or garments in a tailor's shop; nor sacks of corn or meal in a mill; nor anything distrained for damage feasant; for it is in the custody of the law and the like. — *1 Inst. 47.* Beasts belonging to the plough shall not be distrained (which is the ancient common law of England, for no man shall be distrained by the utensils or instruments of his trade or profession, as the axe of the carpenter, or the book of a scholar); while goods or other beasts may be distrained. — *1 Inst. 47.* But this rule holds only in distresses for rent in arrear, and the like; but doth not extend to cases where a distress is given in the nature of an execution, by any particular statute, as for poor rates, and the like. — *3 Salk. 136.* Furnaces, cauldrons or other things fixed to the freehold, or the doors or windows of a house, or the like, cannot be distrained. — *1 Inst. 47.* Things for which a replevin will not lie, so as to be known again, as money out of a bag, cannot be distrained. — *2 Bac. Abr. 109.* But money in a bag sealed, may be distrained, for that the bag sealed may be known again. By the 2 W. sess. 1, c. 5, § 3, persons having rent in arrear, on any demise, lease or contract, may seize and secure any sheaves or cocks of corn, or corn loose, or in the straw, or hay being in any barn or granary, or upon any hovel, stack or rick, or otherwise, upon any part of the land charged with rent, and may lock up or detain the same, in the place where found, in the nature of a distress, so as the same be not removed, to the damage of the owner, out of the place where found and seized, but kept there (as impounded) till replevied or sold. Also by the 11 G. II. c. 19, § 8, the landlord may take and seize corn, grass, hops, roots, fruits, pulses or other product growing, as a distress; and the same may cut, gather, make, cure, carry, and lay up, when ripe, in the barns or other proper place, on the premises; and if there shall be no barn or proper place on the premises, then in any other barn or proper place which he shall procure so near as may be to the premises; the appraisement whereof shall be taken when cut, gathered, cured, and made, and not before. And notice of the place where the goods so distrained shall be lodged, shall in one week after the lodging thereof be given to the tenant or left at the last place of his abode. § 9. And generally, whatever goods and

chattels the landlord finds upon the premises, whether they in fact belong to the tenant or a stranger, are distrainable by him for rent, with the exceptions however above specified; for otherwise a door would be opened to infinite frauds upon the landlord; and the stranger hath his remedy over by action on the case against the tenant, if by the tenant's default the goods are distrained.—3 *Blackstone*, 8. So where a stranger's beasts escape into the land, they may be distrained for rent, though they have not been *levant* and *couchant*, provided they are trespassers; but if the tenant of the land is in default in not repairing his fences, whereby the beasts came into the land, the landlord cannot distrain such beasts, though they have been *levant* and *couchant*, unless he have caused notice to be given to the owner, and the owner suffers them to remain there afterwards.—*Lutw.* 364.

A rent may not be distrained for in the night, but in the day time.—1 *Inst.* 142. For before sunrise or after sunset no man may distrain but for damage feasant.—*Mirroure*, c. 2, § 26.

#### *Distress how to be Demanded.*

By 11 G. II. c. 19, any person distraining may impound or otherwise secure the distress of what kind soever it be, in such place or in such part of the premises as shall be most convenient; and may appraise and sell the same as any person before might have done off the premises.—§ 10.

Cattle distrained may not be worked or used, unless for the owner's benefit, as a cow milked, or the like.—*Cro. Jac.* 148; and if the distress be lost by the act of God, as if the distress dies in the pound without any default in the distrainer, in such case he may distrain again.—1 *Salk.* 248.

By stat. 2 W. sess. 1, c. 5, where any goods shall be distrained for rent, and the tenant or owner shall not, within five days after such distress, and notice thereof left at the premises, replevy the same, the person distraining, with the sheriff, under sheriff, or constable of the peace, shall cause the goods distrained to be appraised by two sworn appraisers (whom such sheriff or constable shall swear), to appraise the same truly, and after such appraisement, the same shall be sold for the best price that can be got, for satisfaction for the rent and charges of the distress, appraisement and sale; leaving the overplus (if any) with the sheriff or constable, for the owner's use.

#### *Fraudulent removal of Goods, &c.*

By 11 G. II. c. 19, § 1, if any tenant for life, years, at will, sufferance, or otherwise, shall fraudulently, or clandestinely, convey off the premises his goods or chattels, to prevent the landlord from distraining, such landlord, or any person by him

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lawfully empowered, may, in thirty days next after such conveying away, seize the same wherever they shall be found, and dispose of them in such manner as if they had been distrained on the premises. § 2. But no landlord shall distrain any goods sold *bona fide* and for a valuable consideration, before such seizure made, to any person not privy to such fraud. § 3. And if any tenant shall so fraudulently remove and convey away his goods or chattels, or if any person or persons shall wilfully and knowingly aid or assist him in such fraudulent conveying away or carrying off of any part of his goods or chattels, or in concealing the same, any person so offending shall forfeit to the landlord *double the value* of such goods, to be recovered in any court of record. § 4. But if the goods and chattels so fraudulently carried off or concealed shall not exceed the value of £50, the landlord or his agent may exhibit a complaint, in writing, before *two* justices of the peace of the same county or division, residing near the place where such goods and chattels were removed, or near the place where the same were found, not being interested in the lands or tenements whence such goods were removed; who may summon the parties concerned, examine the fact, and all proper witnesses, upon oath (or, if a Quaker, upon affirmation), and in a summary way determine whether such person or persons be guilty of the offence with which he or they are charged; and to enquire in like manner of the value of such goods and chattels, and upon full proof of the offence, by order under their hands and seals, the said justices shall adjudge the offender or offenders to pay *double the value* of the said goods and chattels to such landlord, his bailiff, servant or agent, at such time as the said justices shall appoint; and if the offender or offenders, having notice of such order, shall refuse or neglect so to do, they shall, by their warrant, levy the same by distress; and for want of such distress, may commit the offender or offenders to the house of correction, there to be kept to hard labor, without bail or mainprize, for the space of six months, unless the money so ordered to be paid as aforesaid shall be sooner satisfied. § 5. Persons aggrieved by order of such justices may appeal to the next general or quarter sessions, who may give costs to either party. § 6. And where the party appealing shall enter into recognizance, with one or two sureties, in double the sum so ordered to be paid, with condition to appear at such sessions, the order of the justices shall not be executed against him in the mean time. § 7. Where any goods or chattels, fraudulently or clandestinely conveyed or carried away, shall be put, placed, or kept in any house, barn, stable, out-house, yard, close, or place locked up,

fastened, or otherwise secured, so as to prevent such goods or chattels from being taken and seized as a distress for arrears of rent, it shall be lawful for the landlord, or his steward, bailiff, receiver, or other person or persons empowered, to take and seize, as a distress for rent, such goods and chattels (first calling to his assistance the constable, headborough, or other peace officer of the district, &c.); and in case of a dwelling-house (oath being first made before a justice of the peace of a reasonable ground to suspect that such goods or chattels are therein) in the day time, to break open and enter into such house, barn, stable, out-house, yard, close or place, and to take and seize such goods and chattels for the said arrears of rent, as he might have done if they had been in any open place.

#### *Case of Tenant holding over.*

By 4 G. II. c. 28, if any tenant for life, or years, or other person who shall come into possession by, from, or under him, shall wilfully hold over any lands after the determination of such term, and after demand made, and notice in writing given for delivering the possession thereof, he shall, for the time he shall so hold over, pay double the yearly value, to be recovered by action of *debt* in any court of record.—§ 1.

By 11 G. II. c. 19, § 18, if any tenant shall give notice of his intention to quit the premises at a time mentioned in such notice, and shall not accordingly deliver up the possession at the time in such notice contained, he, his executors or administrators, shall from thenceforward pay *double rent*, to be recovered in like manner as the single rent.

\*By 4 W. IV. c. 1, it shall be lawful for any landlord, whose tenant shall, after the expiration of any tenancy (by parol or writing) wrongfully refuse, upon demand made in writing, to go out of possession, to apply to the Court of King's Bench in term, or to a judge in vacation, upon affidavit, who shall order a writ to issue for summoning a jury of twelve men, before the commissioner named to determine the matter; and if in favor of the landlord, a writ of possession shall be issued.

#### *Deserting the Premises.*

§ 16. If any tenant at rack-rent, or where the rent reserved shall be full *three-fourths* of the yearly value of the demised premises, who shall be in arrear for *one year's rent*, shall desert the premises and leave the same uncultivated or unoccupied, so as no sufficient distress can be had, two justices (having no interest in the premises) may at the request of the landlord go upon and view the same, and affix on the most notorious part of the premises notice in writing what day (at the distance of

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fourteen days at the least) they will return to take a second view, and if on such *second view*, the tenant shall not appear and pay the rent, or there shall not be sufficient distress on the premises, then the justices may put the landlord into possession, and the lease as to such demise shall from thence be void. § 17. But the tenant may appeal to the next justice or justices of assize, who may award costs to either party.

## *Rent how far Recoverable by Executors.*

By 32 H. VIII. c. 37, it is enacted that the executors and administrators of any person to whom any such rent shall be due and not paid at the time of his death, may distrain upon the premises, so long as they shall continue in the possession of such tenant, or of any other person claiming under him.

## *Costs.*

\*By the 1 Vic. c. 16, § 1, no person whatsoever making any distress either for rent or for any penalty imposed by the laws of this province, when the sum demanded shall not exceed the sum of £20, for and in respect of such rent or penalty, nor any person whatsoever employed in any manner in making such distress, or doing any act whatsoever in the course of such distress, or for carrying the same into effect, shall have, take or receive, out of the produce of the goods or chattels distrained upon and sold, or from the tenant or other person distrained, or from the landlord, or from any other person whatsoever, any other or more costs and charges for and in respect of such distress, or any matter or thing done therein, than such as are fixed and set forth in the schedule annexed, and no person shall make any charge for anything mentioned in the schedule not really done. § 2. Any person offending herein may be summoned by any one justice upon the complaint of the party aggrieved, and if it shall appear to such justice that the person or persons complained of shall have levied, taken or received, or had other and greater costs and charges than mentioned in the schedule, or made any charge for anything mentioned in the schedule not really done, such justice shall order and adjudge *treble the amount* of the monies so unlawfully taken to be paid, by the person or persons so having acted, to the complainant, together with full costs; and in case of non-payment, such justice shall issue his warrant to levy the same by distress and sale of the goods and chattels of the offender, and in case of insufficient distress, such justice shall by warrant under his hand commit the party to the common gaol, there to remain until such order or judgment be satisfied. § 3. Such justice may summon and examine witnesses on oath touching such

complaint or the defence against it; and in case of non-attendance, without lawful excuse, or refusal to be examined, such person shall forfeit a sum not exceeding 40s., to be enforced by distress or commitment in like manner as aforesaid, except as regards the form of the order as hereinafter provided. § 4. Any party preferring an unfounded complaint shall be adjudged to pay costs not exceeding 20s. to the defendant, to be enforced in manner aforesaid: *Provided always*, that no order or judgment be made against the landlord, unless such landlord shall have personally levied such distress; and *provided further*, that no person aggrieved by any such distress, or any proceedings had in the course thereof, or by any costs or charges levied in respect of the same, shall be barred from any legal remedy, excepting so far as any complaint to be preferred by this act shall have been determined, and such order and judgment may be given in evidence under the plea of the *general issue*. § 5. Such orders and judgments on such complaints shall be made in the form in the schedule annexed, and may be proved before any court by proof of the signature of the justice, and such orders as regards witnesses shall be made in such form as to such justice shall seem fit and convenient. § 6. Every broker, constable, bailiff or other person who shall make and levy any distress, shall give a copy of his charges and of all the costs and charges of any distress whatsoever signed by him to the person or persons on whose goods and chattels any distress shall be levied, although the rent or penalty demanded shall exceed £20.

**SCHEDULE.**

*Form of the Order and Judgment of the Justice before whom complaint is preferred, when the Order and Judgment is for the Complainant.*

In the matter of complaint of A. B. against C. D. for the breach of the provisions of an Act passed in the — year of the reign of her Majesty Queen Victoria, intituled, "An Act," [insert the title of the act,] I, E. F., a justice of the peace for the —, do order and adjudge that the said C. D. shall pay to A. B. the sum of —, as a compensation and satisfaction for unlawful charges and costs levied and taken from the said A. B. under a distress for [as the case may be], and the further sum of — for costs in this complaint.

(Signed) — E. F.

*Form of the Order and Judgment of the Justice, when he dismisses the complaint as unfounded, with or without costs, as the case may be.*

In the matter of complaint of A. B. against C. D. for the breach of the provisions of an Act passed in the — year of the reign of her Majesty Queen Victoria, intituled, "An Act," [insert the title of this act,] I, E. F., a justice of the peace in and for the —, do order and adjudge that the complaint of the said A. B. is unfounded, [if costs are

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give], and I do further order and adjudge, that the said A. B. shall pay unto the said C. D. the sum of—.

(Signed) E. F.

***Schedule of Costs and Charges on Distresses for small Rents and Penalties.***

Levying distresses under £10—5s.

Man keeping possession, per diem—3s. 9d.

Appraisement, whether by one appraiser or more—4d. in the pound on the value of the goods.

If any printed advertisement—not to exceed in all 5s.

Catalogues, sale and commission, and delivery of goods—1s. in the pound on the net produce of the sale.

By the 4 & 5 Vic. c. 25, § 37, the stealing of any chattel or fixture by the tenant is made felony, for which see title "Larceny."

***Distress by Warrant of Justices of the Peace.***

See ante title "Distress," p. 251.

***Notice to Quit.***

Sir—I hereby (as agent for Mr. Nokes, your landlord, on his behalf,) give you notice to quit and deliver up possession of the [house, lands and premises, with the appurtenances] situate at —, in the — county, which you hold of [him] as tenant thereof, on the — day of — next, or at the expiration of the current year of your tenancy, which shall expire next after the end of one-half year from the date of this notice. Dated the — day of —, 185—.

To Mr. Joseph Stiles.

JAMES NOKES.

***Warrant to Distrain.***

To Mr. A. B., my Bailiff, greeting; Distrain the goods and chattels of Joseph Stiles, in the house he now dwells in, [or "upon the farm he now occupies," &c., as the case may be], situate at —, in the county of —, for £22 10s. 6d., being the amount of [one year's] rent due to me for the same, on the — day of — last; and for your so doing this shall be your sufficient warrant and authority. Dated this — day of — 185—.

JOHN NOKES.

***Inventory of Goods distrained.***

An inventory of the several goods and chattels distrained by me, whose name is hereunder written, the — day of —, in the year — in the houses, out-houses, and lands of A. T., in —, by the authority, and on the behalf of A. L., of —, for — pounds arrears of rent due to him the said A. L.

***In the Dwelling-House.***

One Table,

Six Chairs, &c.

***In the Cow-House.***

Six Cows,

Two Calves, &c.

*Notice of Distress.*

Mr. A. T.

Take notice, that by the authority, and on the behalf of your landlord, A. L., I have this — day of — in the year of our Lord — — — distrained the several goods and chattels specified in the schedule hereunto annexed, in your houses, out-houses and grounds, at — for £ —, arrears of rent due to him the said A. L.; and if you shall not pay the said rent so due and in arrear as aforesaid, or replevy the said goods and chattels, I shall, after the expiration of five days from the date hereof, cause the said goods and chattels to be appraised and sold, according to the statute in that case made and provided.

Given under my hand, the day and year first above written. A. D.

Witness, that a copy hereof was this day delivered to the said A. T. (or left at the dwelling-house of the said A. T.) A. W.

*Appraisers' Oath.*

You, and each of you, shall well and truly appraise the goods and chattels mentioned in this inventory, according to the best of your understanding. So help you God.

*Form of the Appraisement.*

The appraisement may be in the form of the inventory, specifying the particulars, and their respective valuations; and then add at the end, Appraised by us, this — day of — in the year —.

A. P. } Sworn Appraisers.  
B. P. }

*Complaint to be exhibited in writing, before two Justices, in the case of Goods clandestinely removed, on the 11 Geo. II. c. 19. (Burn.)*

County of —, } Be it remembered, that this — day of —, A. J.  
to wit. } of —, complaineth that A. O. hath fraudulently and clandestinely removed and conveyed away, certain goods and chattels of —, not exceeding the value of £50, from —, at —, to prevent — from distraining the said goods and chattels, for arrears of rent due to the said —, for the said —; and that B. O. of — yeoman, and C. O. of — yeoman, wilfully and knowingly aided and assisted the said A. O. in so fraudulently and clandestinely removing and conveying away the said goods and chattels, and in concealing the same. A. J.

Exhibited at —, the — day of — }  
before us —, justices of the peace, }  
residing near —, not being interested }  
in —.

*Summons thereupon. (Burn.)*

County of —, }  
to wit. } To the Constable of —.

Whereas complaint in writing hath been this — day of — exhibited at —, before us —, justices of the peace for the said county, residing near —, not being interested in —, by A. J. of —, gen-

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deman, setting forth that A. O. of —, yeoman; hath fraudulently and clandestinely removed and conveyed away certain goods and chattels of —, not exceeding the value of £50, from —, to prevent — from distraining the said goods and chattels, for arrears of rent due to the said — for the said — and that B. O. of —, yeoman, and C. O. of — yeoman, wilfully and knowingly aided and assisted the said — in so fraudulently and clandestinely removing and conveying away the said goods and chattels, and in concealing the same: These are therefore to command you, and each and every of you, forthwith to summon the said A. O., B. O. and C. O., to appear before us at —, on the — day of —, at the hour of —, in the forenoon of the same day, to answer the matter of the said complaint. Given under our hands and seals, at — the — day of —.

## The Conviction

Should be in the form required by the \*2 Wm. IV. c. 4. See ante title "Conviction," p. 200.

*Warrant of Distress, in case the offenders, having notice, refuse or neglect to pay, pursuant to the preceding order.* 11 Geo. II. c. 19, • 27 Geo. II. c. 20. (Burn.)

County of —, }  
to wit. } To the constable of —.

Whereas A. O. of —, yeoman, B. O. of —, yeoman, and C. O. of —, yeoman, were, by an order dated the — day of —, under the hands and seals of us —, and — justices of the peace of —, residing near —, not being interested in —, ordered to pay the sum of —, to — or to his bailiff, servant or agent, on or before the — day of —, being double the value of certain goods and chattels of the said —, which the said A. O. was before us duly convicted of having fraudulently and clandestinely removed and conveyed away from — to prevent the said — from distraining the said goods and chattels, for arrears of rent due to the said — for the said —, and which the said B. O. and C. O. were also duly convicted before us of having wilfully and knowingly aided and assisted the said A. O. in so fraudulently and clandestinely removing and conveying away, and in concealing the same: And whereas the said A. O., B. O. and C. O., having notice of our said order, have refused or neglected to pay, and have not paid the said sum of — pursuant therunto; and the same hath been fully proved before us: These are therefore to command you, and each and every of you, to levy the said sum of —, by distress and sale of the goods and chattels of the said A. O., B. O. and C. O.; and we do hereby order and direct the goods and chattels so to be distrained, to be sold and disposed of within — days, unless the said sum of — for which such distress shall be made, together with the reasonable charges of taking and keeping such distress, shall be sooner paid: And you are also hereby commanded to certify to us what you shall do by virtue of this our warrant. Given under our hands and seals, at —, the — day of —,

*The Constable's return thereupon, of the want of distress. (Burn.)*  
 County of —, } I, A. C. constable of —, do hereby certify to —  
                   } to wit. } and — justices of the peace for the said county,  
 that I have made diligent search for, but do not know of, nor can find  
 any goods and chattels of A. O. and B. O. and C. O., or any of them, by  
 distress and sale whereof I may levy the sum of —.

Given under my hand, this — day of —.

*Commitment thereupon to the House of Correction. (Burn.)*

County of —, } To the Constable of — and also to the keeper of  
                   } the house of correction at —

Whereas A. O. and B. O. and C. O. were, by an order dated the —  
 day of — under the hands and seals of us —, justices of the peace of  
 the said county, residing near —, not being interested in —, ordered  
 to pay the sum of — to — or to his bailiff, servant or agent, on or  
 before the — day of —, being double the value of certain goods and  
 chattels of the said A. O. which the said — was before us duly con-  
 victed of having fraudulently and clandestinely removed and conveyed  
 away to prevent the said A. J. from distraining the said goods and  
 chattels, for arrears of rent due the said A. J. for the said — and which  
 the said B. O. and C. O. were also duly convicted before us, of having  
 wilfully and knowingly aided and assisted the said A. O. in so fraudu-  
 lently and clandestinely removing and conveying away, and concealing  
 the same; and whereas the said A. O. and B. O. and C. O. having notice  
 of our said order, have refused or neglected to pay, and have not yet  
 paid the said sum of — pursuant thereunto, and the same hath been  
 duly proved before us; and whereas it appears to us, by the return  
 of A. C., constable of — dated the — day of — that he hath made  
 diligent search for, but doth not know of, nor can find any goods and  
 chattels of the said A. O. and B. O. and C. O., or any of them, by distress  
 and sale whereof the said sum of — may be levied pursuant to our  
 warrant duly made and issued for levying the said sum of — by dis-  
 tress and sale of the goods and chattels of the said B. O. and C. O.:  
 These are therefore to command you, the said constable of — &c.,  
 and each and every of you, to apprehend the said A. O. and B. O. and C.  
 O. convey them to the said house of correction at — aforesaid; and  
 deliver them to the said keeper of the said house of correction; and  
 these are also to command you, the said keeper of the said house of  
 correction, to receive them the said A. O. and B. O. and C. O. into the  
 said house of correction, and there keep them to hard labour, without  
 bail or mainprize, for the space of six months, unless the said sum  
 of —, so ordered to be paid as aforesaid, shall be sooner satisfied.  
 Given under our hands and seals, at — the — day of —.

*Form of a complaint upon oath to be made before a Justice, in case  
 of a dwelling house where goods and chattels are fraudulently and  
 clandestinely removed, and conveyed away and secured, so as  
 to prevent them from being taken and seized as a distress for rent.*

County of —, } Be it remembered that this — day of — A. J.  
                   } to wit. } of —, yeoman, complaineth and maketh oath that

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certain goods and chattels of A. O. of — yeoman, have been fraudulently and clandestinely conveyed and carried away from — by the said A. O. his servant or servants, agent or agents, or other person or persons, aiding or assisting them to prevent — from distraining the said goods and chattels for £ — arrears of rent due to the said A. J. for the said —, and that the said goods and chattels are, as the said A. J. hath good cause to suspect, and doth suspect and verily believe, put, placed, or kept, in the dwelling house, barn, stable, out-house, yard, close or other place, of — at — locked up, fastened or otherwise secured, so as to prevent the said goods and chattels from being taken and seized as a distress for arrears of rent as aforesaid; wherefore the said A. J. prayeth our warrant in the premises.

Taken and sworn at — the — **A. J.**  
day of — before —.

*Warrant upon the preceding Complaint and Oath.*

County of —, } To the Constable of —.  
to wit.

Whereas A. J. of —, yeoman, hath this — day of — exhibited his complaint, and made oath before —, justices of the peace for the said county, that certain goods and chattels of A. O. of — yeoman, have been fraudulently and clandestinely conveyed and carried away from — by the said A. O., his servant or servants, agent or agents, or other person or persons, aiding or assisting therein, to prevent — from distraining the said goods and chattels for £ — arrears of rent due to the said — for the said —, and that the said goods and chattels are, as the said A. J. hath good cause to suspect, and doth suspect and verily believe, put, placed or kept in the dwelling-house, barn, stable, out-house, yard, close or other place of — at —, locked up, fastened or otherwise secured, so as to prevent the said goods and chattels from being taken and seized as a distress for such arrears of rent, as aforesaid. These are therefore to command you, and each and every of you, to aid and assist the said A. J., his steward, bailiff, receiver or other persons empowered to take and seize, as such distress for rent, as aforesaid, the said goods and chattels, in the day-time to break open and enter into the said dwelling-house, barn, stable, out-house, yard, close or other place of the said — at —, and to take and seize the said goods and chattels for the said arrears of rent, according to law.

Given under our hands and seals at —, the — day of —.

For the Form of Conviction see ante p. 200.

*Recognizance on appeal against the preceding Conviction, for fraudulently assisting to convey goods off the premises, to avoid a Distress, under the 11 Geo. II. c. 19, § 5 & 6.*

County of —, } Be it remembered, that on the — day of —, in  
to wit. } the — year of the reign of our sovereign Lady  
Victoria, by the grace of God, of the United Kingdom of Great Britain  
and Ireland, Queen, defender of the faith, A. B. of —, in the said  
county, yeoman, C. D. of — in the same county, yeoman, and E. F.  
of — in the same county, yeoman, personally came before us, J. C.

and S. P. esquires, two of her Majesty's justices of the peace in and for the said county, and acknowledged themselves to owe to our said lady the Queen the sum of — [the amount must be double the sum ordered to be paid by the conviction, 11 Geo. II. c. 19], to be levied of their goods and chattels, lands and tenements, to the use of our said lady the Queen, her heirs and successors, if the said B. O. shall make default in the condition following:—

The condition of this recognizance is such, that whereas the said A. B. is this day duly convicted before us, the above-named justices of the peace, of having wilfully and knowingly aided and assisted A. O. of — within the township of —, in the county aforesaid, in the night of —, the — day of — last, in fraudulently and clandestinely removing and conveying away part of the goods and chattels of the said A. O. from [describe the place, house, tenement, &c. and where situate, &c.] not exceeding the value of fifty pounds, and in concealing the same, so as to prevent A. J. of —, in the said county, esquire, from taking and seizing the same for arrears of rent due to the said A. J. from the said A. O. for a certain tenement [or as the case may be] situate at — aforesaid, for which offence the said B. O. has been adjudged to forfeit to the said A. J. the sum of —, being double the value of the said goods by the said B. O. so carried off and concealed: Now if the said B. O. shall personally appear at the next General Quarter Sessions of the Peace to be held at —, in and for the said county, and commence and prosecute an appeal against the said conviction, and pay such costs as shall be then and there awarded by the said court, then this recognizance to be void.

*Information and complaint under the 11 Geo. II. c. 19, of Tenant having deserted the Premises.*

County of — } The information and complaint of A. B., of —, in  
to wit. } the said county, taken this — day of —, 185—,  
who saith that he the said A. B. did, in and by a certain indenture bearing date the — day of —, in the year of our Lord 185— (or, by written or verbal agreement, as the case may be), demise unto A. S., of —, in the county aforesaid a certain messuage (or other premises, as the case may be), situate and being at —, in the county aforesaid, at a rack-rent (or three-fourths of the yearly value); that is to say, at the yearly rent of —, payable quarterly (if so), on the — day of — &c.; and that the said A. B. further complaineth, that on the — day of — now last past there was in arrear and due unto him the said A. B. from the said A. S., the tenant of the said demised premises, one whole year's rent thereof, and that he the said A. S. hath deserted the said demised premises, and left the same uncultivated and unoccupied, so as no sufficient distress can be had to countervail the said arrears of rent, and that the said arrears of rent have been duly demanded according to law. Wherefore the said A. B. doth request J. C. and S. R., esquires, two of her Majesty's justices of the peace for the said county, to go and view the said demised premises, and affix on the most notorious part thereof a notice in writing, what day they will return and take a second view thereof, and that a remedy may be given to the said

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A.B. according to the form of the statute in that case made and provided. Taken before us, the said justices, the — day of — 185—

*Notice to be affixed on the Premises being deserted. (Burn.)*

Mr. Abraham Sutcliffe :

Take notice, that upon the complaint of A. B., of —, yeoman, made unto us, J. C. and S. R., esquires, two of her Majesty's justices of the peace for the county of —, that you the said A. S. have deserted the messuage and tenement, situate, lying and being at —, unto you demised, at rack-rent, by him the said A. B., and that there is in arrear and due from you the said A. S., unto him the said A. B., one whole year's rent for the said demised premises, and that you have left the said premises uncultivated and unoccupied, so that no sufficient distress can be had to countervail the said arrears of rent: We the said justices (having no interest, nor neither of us having any interest in the said demised premises), on the said complaint as aforesaid, and at the request of him the said A. B., have this day come upon and viewed the said demised premises, and do find the said complaint to be true; and on the — day of this present month of — we will return to take a second view thereof, and if upon such second view you or some person on your behalf shall not appear and pay the said rent in arrear, or there shall not be sufficient distress on the said premises, then we the said justices, will put him the said A. B. into the possession of the said demised premises, according to the form of the statute in such case made and provided. In witness whereof we have hereunto set our hands and seals, and have caused this notice to be affixed on the out-door of the dwelling house, the same being the most notorious part of the said premises, this — day of —, in the year of our Lord 185—

*Record of putting the Landlord into Possession.*

County of —, } Be it remembered, that on the — day of — in  
to wit. } the — year of the reign of our sovereign lady  
Victoria, at — in the said county, A. B. of — complaineth unto  
us J. C. & S. R., esquires, two of her Majesty's justices of our said  
lady the Queen assigned to keep the peace within the said county, and  
also to hear and determine divers felonies, trespasses, and other misde-  
meanors, in the said county committed, that he the said A. B. did  
demise, at rack rent, unto A. S. of — yeoman, the messuage and  
tenement, lying and being at — aforesaid; and that on the said —  
day of — in the year aforesaid, there was in arrear and due unto him  
the said A. B. from him the said A. S. tenant of the said demised  
premises, one whole year's rent thereof, and that he the said A. S. had  
deserted the said premises and left the same uncultivated and unoccu-  
pied, so as no sufficient distress could be had to countervail the said  
arrears of rent, whereupon the said A. B. then and there, to wit, on the  
said — day of — in the year aforesaid, at — aforesaid, in the  
county aforesaid, requested of us, so as aforesaid being justices, that a  
due remedy should be provided to him in this behalf, according to the  
form of the statute in that case made, which complaint and request by  
us the aforesaid justices being heard, we the said J. C. & S. R., justi.

ces aforesaid (having no interest in the said demised premises), on the said — day of — in the year aforesaid, at — aforesaid, did personally go and view the said demised premises, and then and there upon our own proper view, did find the said complaint to be true, and did then and there affix on the most notorious part of the said premises, to wit, upon the out doot of the dwelling-house aforesaid, a notice in writing, under our hands and seals, that we, the said justices, on the — day of the same — month of — in the year aforesaid, would return to take a second view thereof, upon which said — day of — in the year aforesaid, we, the said justices, do now return and take a second view of the premises aforesaid, and there upon our own proper view do find, that he the said A. S. doth not appear, nor doth any person on his behalf appear and pay the said rent in arrear; and that there is no sufficient distress upon the premises aforesaid, nor upon any part thereof, to countervail the said arrears of rent; therefore we, the said justices, at — aforesaid, on the — day of — in the year aforesaid, do put the said A. B. into the possession of the said demised premises, according to the form of the statute aforesaid. In witness whereof, we, the said justices, unto this record do set our seals, at — aforesaid, in the county aforesaid, on the said — day of — in the year of our Lord 185—.

#### LAND SURVEYORS.

By the 12 V. c. 35, § 2, no person shall act as a land surveyor for hire or profit, without being duly licensed under this act, under a penalty of £10 for every offence. § 3 to 10 contain provisions for qualification and admission. § 11. Chain-bearers to be sworn to act justly and exactly, and to render a true account to the surveyor, and not to be related to any of the parties interested within the fourth degree—viz., of cousin german; such oath to be administered by the surveyor. § 12. Standard measures to be kept by the Commissioner of Crown Lands. § 13. Surveyor to have a standard measure of length, stamped or otherwise certified by the Commissioner of Crown Lands or his deputy for this purpose, under the penalty of forfeiture of license; and shall, previously to any survey, verify the length of his chains and instruments by such standard. § 14. Any person molesting any surveyor in the discharge of his duty shall be deemed guilty of *misdemeanor*, and punishable by fine or imprisonment, or both, in any court of competent jurisdiction; such imprisonment not to exceed two months, nor fine to exceed £5. And any surveyor in the performance of his duties is authorised to pass over, measure along, and ascertain the bearings of any township line, concession, or range line, or other governing line or side-line; and for such purpose to pass over the lands of any person, doing no actual injury. § 45. Surveyors to keep regular journals and field notes, and furnish copies to parties interested, upon payment

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of 5s. for each copy, if not exceeding 400 words, and 6d. for every additional 100 words. § 46. A surveyor may administer oaths to persons he may examine upon any survey. § 47. Such evidence to be reduced to writing and signed by the party; or, if unable to write, acknowledged by him to be correct before two witnesses, who shall sign the same with such surveyor; and such evidence shall, and, with any document or plan prepared and sworn to as correct before a justice of the peace by any surveyor with reference to any survey by him performed, may be filed and kept in the registry office, for production in evidence in any court of law or equity, upon payment to the registrar of 1s. 3d. for filing the same.

See *ante* title "Boundary Lines," p. 109.

### LARCENY.

Larceny is the felonious and fraudulent taking and carrying away by any person of the mere personal goods and chattels of another.—1 *Haw.* 89.

Until lately there were two degrees of larceny—1. *Grand larceny*—which signified the stealing of any goods or chattels above the value of *twenty shillings*, sterling.—*Ordinance of Quebec*, 29 *G. III.* c. 3.—And 2. *Petit larceny*—which included those cases where the property stolen was under the value of *twenty shillings*.—*Id.* But now, by the 4 & 5 *V. c.* 25, § 2, the distinction between grand larceny and petit larceny is abolished; and every larceny, whatever may be the value of the property stolen, shall be deemed to be of the same nature, and shall be subject to the same incidents in all respects as grand larceny was before the commencement of this act. § 2. And every person convicted of simple larceny, or of any felony punishable by this act like simple larceny, shall (except in cases hereinafter otherwise provided for) be liable, at the discretion of the court, to be imprisoned at hard labour in the Provincial Penitentiary for any term not less than seven years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years.

See also *post* title "Punishment," and 6 *V. c.* 5.

#### *Of Larceny in general.*

*Trespass*.—As every larceny includes a trespass, a party who is not guilty of a trespass in taking the goods, cannot be guilty of felony, at *common law*, in carrying them away.—1 *Haw. c.* 33, § 1. Thus, where goods are delivered by the owner to another, upon a trust, or on account of the owner, the possessor cannot be guilty of felony in converting them to his own use, unless by some distinct act of taking; as, by

severing part of the goods from the rest, with intent to convert them to his own use; he thereby determines the privity of the bailment, and the special property thereby conferred upon him.—*Ibid*; 1 *Hale*, 504. But a bare charge of goods, such as that which a servant has over the goods of his master; or a mere liberty to make use of a thing for a particular purpose (such as a traveller at an inn has with respect to the furniture), does not prevent the party from being guilty of felony, if he take or convert the goods to his own use; in both cases the law presumes the property to be still in the possession of its owner.—1 *Hale*, 506.

**Felonious taking.**—There must be a felonious taking, as well as a *severance*, to complete the felony; but the least removal of the thing from its place is sufficient, as where a guest at an inn took off the sheets from his bed with an intent to steal them, but was apprehended in the hall, the larceny was held to be complete; and so, where a man had taken a horse in a field, and while leading him away was apprehended: and again, where a man took plate out of a chest, with intent to steal it, and after laying it on the floor was detected before he could move it further, the felony in either case was held to be complete.—3 *Inst.* 109 *R. v. Simpson, Kel.* 31.

**Severance.**—But where some goods in a shop were tied to a string, fastened by one end to the counter, and a thief took up the goods and carried them towards the door, as far as the string would permit, and was then stopped, this was held to be no *felony*, as there was no actual *severance* of the property.

Where the felony is once completed, the offence is not purged by returning the goods, as where a robber, on finding little in a purse, restores it to the owner.—3 *Inst.* 69.

**Felonious Intent.**—There must also be a felonious intent, and the usual and most direct evidence of this is, where the party takes the goods *clandestinely*, or shortly after the taking, such goods are found *concealed* in his possession, or where he *falsely denies* either the taking or the possession; but where a man takes a plough from a field, and after ploughing his own land returns it to the place whence he took it, telling the owner that he had used the same, it would be wrong to impute a felonious intent.

**Recent possession.**—With respect to the recent possession of the property, it may be laid down as a general rule, that where the stolen goods are found in the possession of another man, *shortly after* the theft or robbery, it is incumbent on him to prove how he came by them, otherwise the presumption is that he obtained them feloniously, and this presumption is strengthened by proving that the prisoner was seen near the spot from

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which the goods were taken about the time of the felony, and by his conduct and demeanor at the time the goods are found in his possession.—2 *East. P. C.* 656.

*Identity.*—The identity of the goods should in general be satisfactorily proved, by marks or otherwise; but where a man is seen coming out of a barn, upon whom corn is found, of the same kind with that missed from the barn, this is strong presumptive evidence of guilt.—*Ib.* 657.

*Claim of right.*—Where the taking of the goods is under a claim of right, this negatives the *animus furandi*, or felonious intent.—*Ib.* 659.

*Finding.*—If a party finding property know the owner of it, and instead of restoring it converts it to his own use, this will be felony.—*Per Lawrence, J.* 2 *Russ.* 102. So where a gentleman left a trunk in a hackney-coach, which had been taken from his *own door*, and the coachman kept it and embezzled the contents, this was held to be felony, as he must have known where he took up the gentleman and ought to have returned the trunk.—*R. v. Lamb*, 2 *East. P. C.* 664. So where the purchaser of a bureau found 700 guineas deposited in a secret drawer therein, which he embezzled, this was said by Lord Eldon (after consulting some of the judges) to be felony; and that if a pocket-book containing bank notes were left in the pocket of a coat sent to be mended, and the tailor took the notes, such a taking was clearly felonious.—*Cartwright v. Green*, 8 *Ves.* 405. But in all cases of finding, where it appears that the party *bona fide* endeavoured to discover the owner, a felonious intent cannot be presumed.

*Fraud.*—Where fraud is used to obtain the possession of property, the party therein is as much guilty of felony as if he had taken it from the owner—thus, where A., having a design to steal B.'s horse, which was impounded on a distress, enters a plaint of replevin and (thereby getting it delivered to him) runs away with it, this is felony.—1 *Hale*, 504, 507. But when the owner of property is induced by fraudulent pretences to give the prisoner *credit* for the goods, this is held not to be larceny but a *cheat*, for which the law has provided an especial remedy, (see *ante* title "Cheat"); and so where a party obtained the delivery of a horse, which was exhibited in a fair for sale, by contracting to buy it and to pay for it immediately, but when it was delivered to him he rode off and never returned, it was held that this was no felony, but a complete sale and delivery upon *credit*, in which the owner had parted with the property as well as the possession.—*R. v. Harvey*, 1 *Leach*, 467. But where a man came to Smithfield market to sell a horse, and a jockey coming there to buy a horse, the owner delivered

his horse to the jockey to try his paces in the market-place, and the jockey rode off with the horse, this was adjudged to be felony, inasmuch as the possession only and not the *property* of the owner in the horse had been parted with.—*Kel. 82.*

*Pretence of exchange.*—Where a prisoner offered to accommodate the prosecutor with gold for bank notes, upon which the prosecutor put down a number of notes, which the prisoner took up and went away, promising to return immediately with the gold, but never came back, this was held to be larceny if the jury believed that the prisoner intended to run away with the notes and not to return with the gold.—*R. v. Oliver, cit. 4 Taunt. 247.*

*Delivery by a servant.*—Where a prisoner ordered a pair of candlesticks from a silversmith to be sent to his lodgings, whither they were sent with a bill by a servant, who was directed to *bring back the money*, but who was sent back by the prisoner under some pretence, when the latter ran away with the candlesticks; this was held to be felony, *no credit* having been given by the owner, and the servant having no legal power to part with the goods till paid for them.

*Bailment.*—Where the possession of the goods is acquired under a bailment of them from the owner, for a special purpose, and the bailee tortiously converts them to his own use, before the bailment is determined, the offence will not amount to larceny; as where a tailor has cloth delivered to him to make clothes of; or where plate is delivered to a goldsmith to work or to weigh; or a friend is entrusted with property to keep for the owner's use.—*2 East. P. C. 693.* When the possession of goods however is *fraudulently* obtained in the first instance, or where the contract of bailment is subsequently determined or broken by some wrongful act of the bailee, then a wrongful conversion of the goods will amount to larceny.

*And first—respecting possession obtained fraudulently by the Bailee.*

The prisoner hired a horse of the prosecutor, on pretence of taking a ride into the country and returning in the evening, but in truth with intent to steal it, and evidencing such felonious intent by immediately selling the horse after possession of it was delivered to him; this was held to be felony.—*R. v. Pear, 2 Leach, 212; 2 East. P. C. 689.* So, where a prisoner hired a chaise at 5s. a-day, saying he should want it for three weeks or a month, as he was going a tour round the north, and no tidings were obtained of him till twelve months afterwards, but no account was ever given of the chaise up to that moment, the presumption being against the prisoner, the jury found him

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guilty.—*R. v. Semple*, 1 *Leach*, 420; 2 *East. P. C.* 691. In all these cases the question of the *real intention* of the prisoner at the time of the hiring is for the consideration of the jury, and if they find that the original taking of the thing hired was with a felonious intent to steal it, the offence will be *larceny*, although the contract of hiring may not be for any precise and definite time.

But where a prisoner hired a horse for a particular purpose, without any *felonious intention* at the time, and he wrongfully sold the horse after that purpose was executed, it was held that this tortious conversion did *not* constitute a *new taking* in law, so as to make him guilty of larceny.—*R. v. Banks, Russ. & Ry.* 441. All such cases of *hiring*, therefore, will now depend upon the question whether the hiring was *bona fide*, or whether it was only a pretence to get possession of the horse, in order that the party might have a better opportunity of stealing it. So, where the prosecutor's house being on fire, the prisoner in his presence and under his observation removed some of his goods (as the jury expressly found) without any evil intention, though the very next morning, upon the prosecutor applying to her, she denied that she had any of the things belonging to him; the prosecutor, however, upon obtaining a search warrant, not only found his property in her house, but most of the articles were artfully concealed in various ways, yet upon this special finding of the jury, that the intention to steal the goods came upon the prisoner *after* she had taken them, the judges were of opinion that the transaction was not a *felony*, but merely a *breach of trust*.—*R. v. Leigh*, 2 *East. P. C.* 694; 1 *Leach*, 411, note (a).

*Larceny by servants*.—Where a servant is entrusted with goods by his master, no legal *possession* is transferred to the servant, who has but a bare charge, the possession of the servant being the possession of the master, the servant may therefore commit larceny by a fraudulent conversion of the goods to his own use.—*R. v. Bass*, 1 *Leach*, 251, 523, 524.

*Banker's Clerk*.—So if a banker's clerk be sent to the money drawer for a special purpose, or if he be sent to bring money generally out of the drawer, and at the same time he take the opportunity of purloining money for his own use, this is felony.—*R. v. Murray*, 1 *Haw. c.* 33, § 7; 2 *East. P. C.* 683; 1 *Leach*, 344.

*By Carriers*.—But although in cases of bailment no larceny can in general be committed of the goods before the regular completion of the contract of bailment, yet there are some tortious acts which determine the privity of it, and amount in law to a new taking from the possession of the owner. This prin-

ciple furnishes the well known distinction in the *Carrier's* case, which, as has been justly observed, stands more upon positive law than upon sound reasoning—2 *East. P. C.* 659; for it certainly does seem a strange departure from good sense and reason to hold, that if a man delivers goods to a carrier to carry to a certain place, and he steal the *whole* of them, it is no felony; but that if he open a bale or trunk, and only steal *some* of the goods, it then becomes a felony.—13 *Ed. IV.* 9, 6. A position involving so great a contradiction, and one which has excited the surprise of so many learned persons, may well be startling to a common understanding; it is thus noticed by Lord Chief Justice Kelyng, who was certainly no mean authority in criminal law:—"I marvel at the case put, 13 *Ed. IV.* 9 b, that if a carrier have a tun of wine delivered to him, to carry to such a place, and he never carry it but sell it, all this is no felony; but if he draw part of it out, this is felony. I do not see why the disposal of the whole should not be felony also."—*Kel.* 68.

The arguments in support of the above distinction appear to be these:—There can be no larceny without a trespass; the carrier (having lawful possession of the goods entrusted him to carry) cannot therefore commit a trespass in taking them until that lawful possession is determined; this lawful possession can only be determined either by the natural termination of the contract of bailment or by some tortious act of the carrier, which rescinds it; and the only tortious acts to determine this possession are, the breaking open a package or a severance of part of the commodity from the rest.

*By Millers.*—So, if a miller steal *part* of the meal produced by the corn delivered to him to grind, this being taken out from the rest, is felony.—2 *East. P. C.* 698.

*Fraudulent wagers.*—A man is frequently swindled out of his money by fraudulent bets and wagers, upon a preconceived plan to defraud him, when it becomes a material question (as in all other cases of delivery) whether the *property*, or only the *possession* of the money, or other thing, is parted with; in the first case, the offence is held not to amount to larceny, as there is no felonious taking, but in the last it is otherwise, if the possession be gained *animo furandi*. Thus, where several sharpers inveigled the prosecutor to bet with them at *hiding under the hat*, and after suffering him to win at first, contrived to strip him of a large sum of money on the event of a bet, it was held, that though this was found by the jury to be a preconceived scheme to get his money, yet it was no felonious taking, as he parted with his property under the idea that it had been fairly won.—*R. v. Nicholson*, 2 *Leach*, 610; 2 *East. P. C.* 699.

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**Card playing.**—But where the prisoners decoyed the prosecutor into a public house, and there introduced the game of cutting cards, and the prosecutor having pulled out some money, but, not playing on his own account, one of the sharpers prevailed upon him to cut the cards for him, and then, under pretence that the prosecutor had cut the cards for himself, and had lost, another of them swept his money off the table and went away with it; this was decided to be one of those cases that should be left to a jury to determine *quo animo* the money was obtained, and which would be *felony* if they found that the money was obtained upon a preconcerted plan to steal it.—*R. v. Homer*, 1 *Leach*, 270; *Cald.* 295.

**Ring dropping.**—So, where the delivery is by way of pledge or security, the *property* remains in the owner, and *larceny* may be committed of it, if the delivery were obtained fraudulently, and with intent to steal; as, where the prisoner and some accomplices being in company with the prosecutor, one of them stooped down and pretended to find a valuable ring, upon which they promised the prosecutor that he should have his share of the value of it, and by that means prevailed on him to deposit his money and watch, and to take the ring until his share of the value should be paid, when the accomplices made off with the money and watch, and the ring proved to be of little or no value; this was held to be *larceny*, as the possession was obtained by fraud, and the property not altered.—*R. v. Patch*, 2 *East. P. C.* 678; 1 *Leach*, 238. In like manner where several act in concert all will be guilty of the felony. Thus, where three sharpers pretended that the prosecutor could not bet £100, when being provoked by the challenge, he produced that sum in notes, which one of them took to count, and then handed to another, who, with the third, pretended to gamble for them; when the first mentioned thief beckoned the prosecutor out of the room, and the other two decamped with the money, and all three afterwards shared it; this was held *larceny* in all three.—*R. v. Stanley*, *Russ. & Ry.* 305.

*Of what things Larceny may be committed.*

Every description of personal property (with the exceptions hereinafter noticed) may be the subject of *larceny*; such as money, goods, wearing apparel, cattle, and the like. If the personal goods savour anything of the realty (or freehold), it cannot be *larceny*; therefore it is no *larceny*, but a bare trespass, to steal corn or grass growing, or apples on a tree; but it is *larceny* to take them being severed from the freehold, as wood cut, grass in-cocks, stones dug out of the quarry; and this, whether they are severed by the owner or even by the

thief himself, if he sever them at one time, and then come at another and take them.—1 *Haw.* 93; 1 *H. H.* 510.

Also, the goods ought to have some worth in themselves, and not to derive their whole value from the relation they bear to some other thing, which cannot be stolen, as paper or parchment, on which are written assurances concerning lands, or obligations, or covenants, or other securities for a debt or *chose* in action.—1 *Haw.* 93. The goods ought also not to be things of a base nature, as dogs, cats, bears, foxes, monkeys, ferrets, and the like; which, howsoever they may be valued by the owner, shall never be so highly regarded by law, that for their sakes a man shall die.—1 *Haw.* 93.

**Property unknown.**—There may be felony in taking goods, the owner whereof is unknown; in which case, the king shall have the goods, and the offender shall be indicted for taking the goods of a person unknown.—1 *Haw.* 94.

**Stealing securities.**—By 4 & 5 Vic. c. 25, § 5, if any person shall steal any tally, order or other security whatsoever, entitling or evidencing the title of any person or body corporate to any share or interest in any public stock or fund, whether of this province or of the United Kingdom of Great Britain and Ireland, or of any British colony, or of any foreign state or colony, or in any fund of any body corporate, company or society, or to any deposit in any savings bank, or shall steal any debenture, deed, bond, bill, note, warrant, order or other security whatsoever for money or for payment of monies, whether of this province or of Great Britain,\* or of any British colony, or of any foreign state or colony, or shall steal any warrant or order for the delivery or transfer of any goods or valuable thing, every such offender shall be deemed guilty of felony in the same degree and punishable in the same manner as if he had stolen any chattel of like value.

**Stealing from vessels.**—§ 21. If any person shall steal any goods or merchandize in any vessel, barge or boat, in any port of entry, or discharge upon any navigable river or canal, or in any creek belonging to or communicating therewith, or shall steal any goods or merchandize from any dock, wharf or quay adjacent thereto, being convicted thereof, he shall be liable to any of the punishments which the court may award, as in said act is mentioned.

**Stealing records.**—§ 25. If any person shall steal, or shall for any fraudulent purpose take from its place of deposit, or from any person having the lawful custody thereof, or shall unlawfully and maliciously obliterate, injure or destroy any

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record, with affidavit, or document or relating or terminating, or depository, document to any cause, such court authentic and meanor, a discretion Provincial years nor other prisoning two years imprisonment not be necessary stolen was

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record, writ, return, panel, process, interrogatory, deposition, affidavit, rule, order or warrant of attorney, or any original document whatsoever of or belonging to any court of justice, or relating to any matter, civil or criminal, begun, depending or terminated in any such court, or any bill, answer, interrogatory, deposition, affidavit, order or decree, or any original document whatsoever of or belonging to any court, or relating to any cause or matter begun, depending or terminated in any such court, or any notarial minute, or the original of any other authentic act, every such offender shall be guilty of a misdemeanor, and being convicted thereof, shall be liable, at the discretion of the court, to be imprisoned at hard labor in the Provincial Penitentiary, for any term not exceeding fourteen years nor less than seven years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years, or to suffer such other punishment by fine or imprisonment, or both, as the court shall award; and it shall not be necessary to allege in the indictment that the article stolen was the property of any person, or of any value.

*Stealing wills.*—§ 26. If any person shall either, during the life of the testator or testatrix, or after his or her death, steal, or for any fraudulent purpose destroy or conceal, any will, codicil, or other testamentary instrument, whether relating to real or personal estate, or both, such offender shall be guilty of a misdemeanor, and being convicted thereof, shall be liable to any of the punishments which the court may award, as before mentioned; and it shall not be necessary to allege in the indictment that the same was the property of any person, or of any value.

*Stealing title deeds.*—§ 27. If any person shall steal any original paper or parchment, written or printed, or partly written and partly printed, being evidence of the title to any real estate, such offender shall be deemed guilty of a misdemeanor, and being convicted thereof, shall be liable to any of the punishments which the court may award, as before mentioned; and in the indictment, it shall be sufficient to allege the thing stolen to be evidence of title, or of part of the title, of the person or persons having a present interest, legal or equitable, in the real estate to which the same relates, and to mention such real estate or some part thereof; and it shall not be necessary to allege value.

§ 28. Nothing in this act contained shall prevent, lessen or impeach any remedy at law or in equity which any party aggrieved might or would have if this act had not been passed; but the conviction of such offender shall not be evidence in any action at law or suit in equity against him, nor shall such

offender be convicted by any disclosure made by him on oath upon compulsory process in any action or suit at law or in equity, or before commissioners of bankrupt.

*Stealing glass, lead, &c.*—§ 36. If any person shall steal or rip out or break with intent to steal any glass or wood-work belonging to any building whatsoever, or any lead, iron, copper, brass or other metal, or any utensil or fixture, whether made of metals or other materials, respectively fixed in or to any building whatsoever, or anything made of metal fixed in any land, being private property, or for a fence to any dwelling-house, garden or area, or in any square, street or other place dedicated to public use or ornament, every such offender shall be guilty of felony, and being convicted thereof, shall be liable to be punished in the same manner as in the case of simple larceny; and in case of any such thing fixed in any square, street, or other like place, it shall not be necessary to allege the same to be the property of any person.

*Stealing by Clerks or Servants.*—§ 38. If any clerk or servant shall steal any chattel, money or valuable security belonging to or in the possession or power of his master, every such offender, being convicted thereof, shall be liable, at the discretion of the court, to be imprisoned at hard labor in the Provincial Penitentiary, for any term not exceeding fourteen years, nor less than seven years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years.

*Stealing by Tenants.*—By 4 & 5 Vic., c. 25, § 37, if any person shall steal any chattel or fixture let to be used by him or her in or with any house, or with any house or lodging, whether the contract shall have been entered into by him or her, or by her husband, or by any person on behalf of him or her or her husband, every such offender shall be guilty of felony; and being convicted thereof, shall be liable to be punished in the same manner as in the case of simple larceny; and in every case of stealing any chattel the indictment may be preferred in the common form as for larceny; and in every such case of stealing any fixture, the indictment may be preferred as if the offender were not a tenant or lodger, and the property laid in the name of the owner or person letting to hire.

*Restitution.*—§ 49. If any person guilty of such felony or misdemeanor as aforesaid, in stealing, taking, obtaining or converting, or in knowingly receiving any chattel, money, valuable security, or other property whatsoever, shall be indicted for any offence by or on the behalf of the owner of the property, or his heir, executor, administrator, and convicted thereof, in such case the property shall be restored to the owner

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or his representative; and the court before whom any such person shall be so convicted shall have power to award, from time to time, writs of restitution for the same property, or to order the restitution thereof in a summary manner: *Provided always*, that if it shall appear before any award or order made that any valuable security shall have been *bona fide* paid or discharged by some person or body corporate liable to the payment thereof, or being a negotiable instrument shall have been *bona fide* taken or received by transfer or delivery by some person or body corporate for a just and valuable consideration, without any notice, or without any reasonable cause to suspect that the same had by any felony or misdemeanor been stolen, taken, obtained or converted, as aforesaid, in such case the court shall not award or order the restitution of such security.

*Apprehension without Warrant.*—§ 55. Any person found committing any offence punishable either upon indictment or summary conviction, by virtue of this act, may be immediately apprehended, without a warrant, by any peace officer, or by the owner of the property on or with respect to which the offence shall be committed, or by the servant of any person authorised by such owner, and forthwith taken before some neighbouring justice, to be dealt with according to law.

See also *post* title "Search Warrant."

*Trial.*—§ 68. If any person having stolen or otherwise taken away any chattel, money, valuable security or other property whatsoever, the stealing or unlawfully taking whereof is made punishable by indictment by any of the provisions of this act, in any part of her Majesty's dominions, shall afterwards have the same property in his possession in any part of this province, he may be dealt with, indicted, tried and punished for such offence under this act, in that part of this province where he shall so have such property, in the same manner as if he had actually stolen it or unlawfully taken it in that part; and if any person in any part of this province shall receive or have any chattel, money, valuable security or other property whatsoever, which shall have been stolen or otherwise unlawfully taken in any other part of her Majesty's dominions, such person knowing the said property to have been stolen or otherwise unlawfully taken, he may be dealt with, indicted, tried and punished for such offence in that part of this province where he shall so receive or have the stolen property, in the same manner as if it had been originally stolen or unlawfully taken in that part of this province as aforesaid.

#### *Of Larceny from the Person.*

If the goods are taken from a man's person, the offence then

receives a further degree of guilt; and if it be attended with putting him in fear, it is called robbery.

See also *post* title "Robbery."

*Form of the Warrant for Larceny.*

County of —, } To the Constable of — and all other peace officers  
to wit. } whom it may concern.

Forasmuch as A. B., of —, laborer, hath this day been charged before me, J. P., one of her Majesty's justices of the peace for the said county, on the oath of a credible witness, for that he the said A. B., on the — day of —, in the year of our Lord 185—, at — in the said county, did feloniously steal, take and carry away twenty pieces of gold coin, called sovereigns, the property of one B. C.: These are therefore to command you, in her Majesty's name, forthwith to apprehend and bring before me, or some other of her Majesty's justices of the peace in and for the said county, the body of the said A. B., to answer unto the said charge, and to be further dealt with according to law. Herein fail you not.

Given under my hand and seal, the — day of —, in the year of our Lord 185—. J. P. [L.S.]

For the forms of Commitment, see title "Commitment," "Justices of the Peace," &c.

**LAW.**

\*By 32 G. III. c. 1, § 3, it is enacted that in all matters of controversy relative to property and civil rights, resort shall be had to the laws of England as the rule for the decision of the same. § 6. But that nothing in this act shall introduce any of the laws of England respecting the maintenance of the poor, or respecting bankrupts.

**LIBEL.**

A libel has been usually defined to be any scandal *written* or *printed*, or otherwise expressed by symbols—*Lamb. 64*; and taken in its largest sense, signifies any *writing* or *printed* paper, picture, or the like, of an immoral or illegal tendency; and in a more limited sense, a malicious defamation of any person, either living or dead, made public either by printing, writing, signs or pictures, in order to provoke to wrath, or expose him to public hatred, contempt and ridicule.—*4 Bl. Com. 105*. But words *spoken*, however malicious and untrue, and actionable at law, will not amount to libel.

*1. Of Libels which affect the Public in general.*

All publications blaspheming the Almighty, or turning the Christian religion into ridicule; all publications tending to vitiate and corrupt the minds and morals of the people; any attempt made to degrade and vilify the constitution, and tend-

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ing to circulate discontent among the members of the community and stir up insurrection; any writing or printed matter tending to vilify or disgrace the king, to lessen him in the esteem of his subjects, weaken the government, or raise jealousies between him and his people—are more or less of a libellous tendency. So, any publication reflecting in an improper manner upon either house of parliament, is a libel at common law. To hold up the king's government to contempt and hatred, is also punishable as a libel.—*R. v. Tutchin, Holt's Rep. 424.* And any publication tending to degrade and defame the sovereign or ruler of a foreign state upon terms of amity with this country, is a libel at common law.

## 2. Of Libels on Private Individuals.

Not only charges of a flagrant nature are libellous, but also those which place an individual in an ignominious light, and bring him into hatred, contempt or ridicule, on the ground that all such libels have a direct tendency to a breach of the peace.—*4 Bl. Com. 150.* General imputations, also, on a body of men, though no individuals are pointed out, are indictable.—*2 Barnard, 138, 166.* And a malicious defamation of a deceased person, if published with intent to vilify his memory and injure his posterity, is indictable as a libel.—*R. v. Topham, 4 T. R. 126.* Any scandal likewise expressed by indirect means is a libel, as well as that which is expressed in direct terms: thus, to fix up a gallows against a person's door conveys a meaning as obvious to common sense as that which is expressed by writing or printing.—*1 Haw. c. 73, § 2, 3.* So a defamatory writing expressed by the initials only of a person's name, is as complete a libel as if the whole name had been expressed.—*1 Haw. c. 73, § 5.*

By 13 & 14 V. c. 60, § 1, upon the trial of a ry indictment for libel, the jury may give a general verdict of "guilty" or "not guilty" upon the whole matter in issue, without being required to find the defendant guilty merely on the proof of publication, and may also find a specific verdict if they think fit; and the defendant may move in arrest of judgment, on such ground and in such manner as he might have done before this act. § 4. If any person shall publish, or threaten to publish, any libel, or shall directly or indirectly propose to abstain from or offer to prevent the printing or publishing of any matter or thing touching or concerning any person, with intent to extort any money or security for money, or any valuable thing, from such person, or with intent to induce any person to confer or procure for any person any appointment, office of profit or trust, every such offender, upon conviction, shall be liable to be fined any sum

not exceeding £100, and to be imprisoned in the common gaol not exceeding *two* years. § 5. If any person shall maliciously publish any defamatory libel, *knowing the same to be false*, he shall on conviction be liable to a fine not more than £50, and to be imprisoned in the common gaol not exceeding one year. § 6. If any person shall maliciously publish any defamatory libel, such person shall upon conviction be liable to fine and imprisonment, *or both* (a), as the court may award; such fine not to exceed £25, nor imprisonment six calendar months. § 7. On the trial of any indictment for a defamatory libel, the defendant may plead in defence the truth of the matters charged, alleging that it was for the *public benefit* that the same should be published; but the defendant shall not be allowed to plead "not guilty," in addition to such special plea. § 8. Under the plea of "not guilty," it shall be competent to the defendant to prove that such publication was made without his authority, consent or knowledge, and that such publication did not arise from want of due care or caution on his part. § 9. In case of any indictment for libel by a private prosecutor, if judgment be given against the defendant he shall be liable to the prosecutor's costs, and *vice versa* the prosecutor shall be liable for defendant's costs; such costs to be taxed by the clerk of the Court of Queen's Bench or Common Pleas, or their deputies, where the trial is had, and recoverable by *attachment* on the order of any judge of the superior court, or of the county court where the indictment was tried.

### 3. Of the Publication.

No one is punishable for a libel unless he actually publish it to the world. Reading a libel in the presence of another, without any previous knowledge of its libellous qualities, does not amount to publication; but if a man, *knowingly*, lends or shows it to another, or repeats it in the presence of others, this is a publication.—1 *Haw. c. 73*; and not only he who publishes the libel himself, but also he who procures another to publish it, is guilty of the publication.—1 *Haw. c. 73, § 10*. So, the sale of a book in a bookseller's shop by his shopman, is *prima facie* evidence of publication by the master.—1 *Barnard, 306*.

### 4. Of the Punishment.

The punishment for libel is fine or imprisonment, or both. In matters of libel, justices of the peace have an original jurisdiction: and a party charged with the publication of a libel may be held to bail by a justice of the peace to appear at the sessions or assizes.—*Butt. v. Conant, 1 Brod. & B. 548*.

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*Information against a Party for Libel.*

County of —, } The information and complaint of A. B. of — in  
to wit. } the county of — taken on oath, this — day  
of — 18 —, before J. P. esq., one of her Majesty's justices of the  
peace for the said county. The said informant saith, that in a certain  
printed book (or newspaper) printed and published at — in the said  
county, by one G. M. and called [*here set out the name or title of the  
book or paper*] the following libellous allegation is contained, of and  
concerning this informant, [*here insert the libellous passage literatim*]  
and the said informant saith, that he hath been informed and verily  
believes the said book, &c., containing the aforesaid libellous matter,  
was printed and published by the said G. M., with a view to injure,  
vilify, and defame, this informant, and to bring him into public hatred,  
ridicule, and contempt; wherefore he prayeth a warrant against the  
said G. M., and that he may be further dealt with according to law.

Sworn before me.

*Recognizance to appear at the Sessions.*

*To be taken in the usual form.*] The condition of this recognizance  
is such, that if, the said G. M. shall and do personally appear at the  
next general quarter sessions of the peace [or assizes and general gaol  
delivery] to be holden in and for the said county, and then and there  
answer to a bill of indictment, to be preferred against him, the said G.  
M., for a libel on one A. B. of — in the said county —, and not  
depart the court without leave, then this recognizance to be void.

Acknowledged before, &c.

*Indictment for a Libel. (Archbold.)*

County of —, } The jurors of our lady the Queen upon their oath  
to wit. } present, that J. S., late of the township of —, in  
the county of —, schoolmaster, contriving, and unlawfully, wickedly  
and maliciously, intending to hurt, injure, vilify and prejudice, one J.  
N. and to deprive him of his good name, fame, credit and reputation,  
and to bring him into great contempt, scandal, infamy and disgrace, on  
the — day of — in the — year of the reign of our sovereign  
lady Victoria, with force and arms, at the township aforesaid, in the  
county aforesaid, unlawfully, wickedly and maliciously, did write and  
publish, and cause and procure to be written and published, a certain  
false, scandalous and malicious libel, in the form of a letter, directed to  
the said J. N. [*or if the publication were in any other manner, omit  
the words 'in the form,' &c.*] containing divers false, scandalous, and  
malicious matters and things, of and concerning the said J. N. and of  
and concerning &c. [*here insert such of the subjects of the libel  
as it may be necessary to refer to by the innuendos, in setting out the  
libel*] according to the tenor and effect following, that is to say, [*here  
set out the libel, together with such innuendos as may be necessary to  
render it intelligible*], to the great damage, scandal and disgrace of the  
said J. N., to the evil example of all others in the like case offending,  
and against the peace of our lady the Queen, her crown and dignity.

## LINE FENCES AND WATER COURSES.

By stat. 8 Vic. c. 20, § 1 (a), the inhabitant freeholders and householders of every township, at their annual township meeting, may choose not less than three nor more than twelve fit and proper persons for *fence viewers*, who are declared to be township officers, and shall make the same declaration and be liable to the penalties as other township officers. § 2. Each of the parties occupying adjoining tracts of land shall keep up, make and repair a fair and just proportion of the division or line fence between their several tracts, which line fence shall be made on the line dividing such tracts, and, equally on either side thereof; and in case of dispute as to the commencement or extent of such line fence, the same shall be submitted to the determination and award of *three fence viewers*, who shall, upon being notified by either party, attend at the time and place stated in such notice, and being satisfied that the other party has been duly notified, proceed to examine the premises; and such fence viewers, or any two of them, shall determine any dispute in the matter between the parties, and their award shall be binding as far as concerns the making or repairing such fence; and from thenceforth the occupiers shall respectively make and repair and keep in repair the part assigned in such award to each occupier, which award shall be in writing and signed by the fence viewers or a majority of them, and filed with the town clerk, and a copy given to each party if required. In case of any material change in the improvement and occupation of adjacent lots, another award may be obtained in like manner; but if the fence viewers shall find such subsequent award unnecessary, the cost of the reference shall be paid by the party applying. § 3. Any party in the occupation of any tract neglecting or refusing to make or repair an equal or just proportion of the fence for a period of *thirty* days after demand in writing from the other party, or after the award of the fence viewers, or if the party making the demand shall for such period neglect to make or repair his proportion, either party, after completing his own proportion, may make or repair in a substantial manner, and of good sound materials, the proportion of the other party, and may recover from him the value, not exceeding 2s. 6d. per rod. Any fence adopted at the last township meeting to be deemed a lawful fence; and if none adopted, the fence viewers are to decide what they consider a lawful fence. § 4. Any party interested may apply

(a) This section has been repealed by 12 V. c. 80; and by 12 V. c. 81, the appointment of fence viewers is vested in the municipal council of the township.

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to a justice for a summons to *three* fence viewers to attend and view the fence and appraise the same; and also for a summons to the other party, requiring him to attend and shew cause why the party claiming payment should not recover.

§ 5. Such fence viewers, upon being *personally served* *four* days previously with such summons, and any two of them being present, and having examined the fence and received evidence (to be given under oath if required), shall determine whether the plaintiff is entitled to recover any and what sum from the defendant; and where the extent of such line fence has not been determined by the award of fence viewers, the said fence viewers, or any two of them, shall determine the same; such determination to be final, and report made in writing under their hands to the justice issuing the summons; and in cases where the plaintiff is entitled to recover, shall state what distance of fence they have determined the defendant should have made or repaired; and the fence viewers, if required, shall give a copy of such determination to either party before making such report. § 6. Such justice may issue summons for the attendance of witnesses before such fence viewers, who may administer the following oath:

You do solemnly swear that you will true answer make to such questions as may be asked of you by either of the fence viewers now present, touching the matters which they are now to examine and determine. So help you God.

Any person swearing falsely to be guilty of perjury. § 7 The said justice shall transmit the determination of the fence viewers to the clerk of the division court, and a certified copy to the town clerk to be recorded; and thereupon the clerk of the division court shall issue an execution against the goods and chattels of the defendant for the sum determined upon by the fence viewers, with costs, as hereinafter provided; such execution not to be issued until *forty* days after the determination. § 8. If any party shall cease to occupy or improve his land, or shall lay the enclosure, before under improvement, in common, such party shall not take away any part of the division fence, provided the other party will allow and pay therefor so much as the fence viewers, or a majority of them, shall in writing determine to be the reasonable value thereof; and wherever any lands unimproved and in common shall be afterwards enclosed or improved, the occupier shall pay a fair or just proportion of the division fence, the value to be ascertained and set forth in writing by *three* fence viewers in case the parties shall not agree, and the amount may be recovered in the same manner as hereinbefore provided. § 9. In no case

shall any person take away any part of a division or line fence adjoining to the next enclosure improved or occupied, unless the occupier of such adjoining lands refuse, after demand in writing, to pay for the same; nor without giving at least *twelve months'* previous notice. § 10. Water fences to be made in equal parts unless otherwise agreed; and in case either party shall neglect or refuse to pay his share, similar proceedings to be had as respecting other fences. § 11. Where lands belong to, or are occupied by different persons, bounded upon or divided by any brook, pond or creek not of itself a sufficient fence, in case of disagreement, the same may be submitted to *three* fence viewers, as before provided; and if in their opinion the same is not a sufficient barrier, and that it is impracticable to fence at the true boundary line, they shall determine how, or on which side thereof, the fence shall be set up, or whether partly on one side and partly on the other; and if either party shall refuse or neglect to maintain his part of the fence, the same may be done as in other cases, and the costs and charges recovered from the delinquent party. § 12. Ditches or water courses for draining swamp or miry lands are to be made by the parties interested, in just proportions; and in case of dispute as to the part, width, depth or extent, the same is to be referred to three fence viewers, in the same manner as other disputes respecting fences; and such fence viewers shall divide or apportion such ditch or water course among the parties in a just and equitable proportion, according to their respective interests, in opening such ditch or water course, and shall decide upon the time to be allowed each party for opening his share; and the award of such fence viewers shall be made in the same manner and have the same effect as in case of division or line fences. § 13. If it shall appear that any owner or occupier be not sufficiently interested in the opening of such ditch or water course, to make him a party, and at the same time it should be necessary that such ditch or water course should be continued across his land, they may award accordingly; and the other party may lawfully open such ditch or water course across such land at his own expense, without being a trespasser. § 14. On neglect of any party, upon demand in writing, to open or make and keep open his share awarded by such fence viewers as aforesaid within the time allowed by them, either of the other parties may, after completing his own share, open the share of the party neglecting, and shall be entitled to recover from such other party no more than 2s. per rod, in the same manner as provided for line fences. § 15. Road allowances in the rear of any lot not travelled or required to be used by the pub-

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lic, may be lawfully enclosed as against any private party: Provided that such possession shall cease upon an order made by two justices, directed to the township officer, requiring him to open the same. § 16. The following fees to be taken under the act.

## To Justices of the Peace.

For summons to fence viewers .....	1s. 3d.
For <i>subpœna</i> , which may contain three names .....	1s. 3d.
For transmitting copy of fence viewers' determination to division court and to township clerk .....	1s. 3d.

## To the Fence Viewers.

Per day each .....	5s. 0d.
If less than half a day employed .....	2s. 6d.

## To the Bailiff or Constable employed.

For serving summons or <i>subpœna</i> .....	1s. 0d.
Mileage—per mile .....	4d.

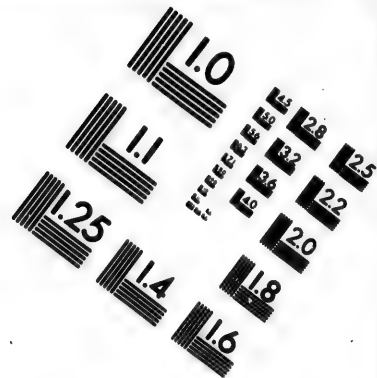
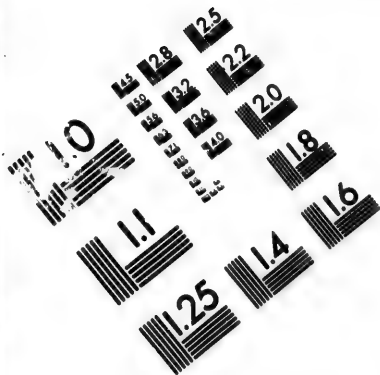
## To Witnesses.

Per day each .....	2s. 6d.
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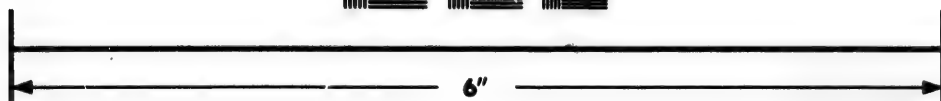
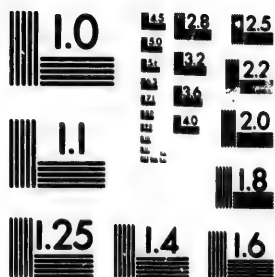
§ 17. The above fees to be included in any execution to be issued, upon the party making oath before the clerk of the division court of the same having been paid. § 19. The former statute, 4 W. IV. c. 12, repealed.

# LOCK-UP HOUSES.

By 10 & 11 Vic. c. 41, § 3, District Councils are authorised to establish a Lock-up house in any town or village containing not less than 100 adult inhabitants, and not being distant less than ten miles from the district town; to be placed in charge of a constable, to be specially appointed by the magistrates in General Quarter Sessions; such constable to be a resident in such town or village, and one of the constables of the township; and said justices may allow such salary or fees as they think proper. § 5 provides, that it shall be lawful for any justice of the peace residing at or near any town or village where such lock-up house may be established, or nearer to the same than the district town, to authorise by written order the confinement or detention therein of any person charged on oath with any criminal offence, until such person may be fully examined and committed for trial to the common gaol, or dismissed (as the case may be), so that such confinement do not exceed *two* days; also all persons found in the streets or highways in a state of intoxication, or convicted of unlawfully desecrating the sabbath; and generally all persons convicted on view of such justice, or on the oath of one or more witnesses, of any offence cognizant by law, so that such detention or con-



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finemen: in the last mentioned cases do not exceed twenty-four hours, and to authorise the detention therein of any person committed to the gaol, until such person can be conveyed to gaol. § 6. The expense of conveying any prisoner to, and detaining him or her in such lock-up house, is to be defrayed in the same manner as the expense of conveying such prisoner to and keeping him or her in the common gaol.

By 12 Vic. c. 80, secs. 1, 2 and 4 of the above act are repealed, and secs. 5 & 6 are retained.

By 12 Vic. c. 81, § 80, the municipal council of any incorporated village are authorised to make by-laws for (amongst other things) establishing, maintaining and regulating lock-up houses.

See titles, "Cities"—"Towns"—"Villages."

### LORD'S DAY.

By statute 3 Vic. c. 45, § 3, any merchant, tradesman, artificer, mechanic, workman, labourer or other person, selling or offering for sale, or purchasing any goods, &c., or real estate, on the Lord's day, commonly called *Sunday*, or exercising any worldly labour or calling on that day; or any person tippling or allowing tippling in any inn or tavern, &c., or being intoxicated, or brawling or using profane language in the public streets, or attending any political meeting on that day; or playing at skittles, ball, foot-ball, racket, or any noisy game, or gambling, or racing on foot or horseback or in carriages, or fishing or hunting, or shooting any deer or other game, or setting any net or trap (except in defence of property) for any wolf, beast or bird of prey; or bathing in any exposed place, or within view of any place of public worship or private residence, on the Lord's day—shall, upon conviction before a justice, upon the oath of one or more witnesses, pay a fine not exceeding £10, nor less than 5s.

§ 4. Proceedings to be by summons, and *ex parte* in case of non-appearance and proof of service of summons; or the justice may issue his warrant against the offender, and upon the party being brought up or appearing, the justice may proceed to hear and determine the case, or at once commit the offender to safe custody until the morrow or some other day, according to circumstances, until case disposed of.

§ 5. Conviction to be in the following form:—

#### Form of Conviction.

Be it remembered, that on the — day of —, in the year of our Lord —, at —, in the county of — (or district, riding or division, as the case may be), A. B. of —, is convicted before me, C. D., one of her Majesty's justices of the peace for the said county (or district,



riding or division, *as the case may be*), for that he the said A. B. did (*specify the offence, and the time and place when and where the same was committed, as the case may be*); and I, the said C. D., adjudge the said A. B. for his offence to pay (immediately, *or on or before the* — day of —) the sum of —, and also the sum of — for costs; and in default of payment of the said sums, respectively, to be imprisoned in the common gaol of the said county (or district, riding or division, *as the case may be*) for the space of — months, unless the said sums shall sooner be paid; and I direct that the said sum of — (*the penalty*) shall be paid as follows: that is to say, one moiety thereof to the party charging the offence, and the other moiety to the treasurer of the district, to be by him, the said treasurer, applied according to the provisions of the act [*insert the title of this act*]. Given under my hand and seal, the day and year first above mentioned.

C. D., J. P. [L. S.]

§ 6. Conviction not to be quashed for want of form.

§ 7. Penalties and costs to be levied by distress and sale; and in case of insufficient distress, the offender may be committed to the common gaol for any term not exceeding *three* calendar months, unless such fine and costs be sooner paid.

§ 8. Prosecutions to be within one calendar month. § 9. Appeal allowed to the General Quarter Sessions. § 10. Convictions to be forwarded to the sessions. § 11. Actions against

any person acting in the execution of this act to be commenced within *three* calendar months, and one calendar month's previous notice in writing to be given; the general issue may be pleaded, with tender of amends, and full costs to defendant in case of decision in his favour. § 12. Half the penalty to go to the informer, and the other half to the district. § 13. This act to be a public act. § 14. Not to extend to Lower Canada, or to Indians.

By the Municipal Act 12 Vic. c. 81, the municipal authorities in incorporated villages, towns and cities, are authorised to make by-laws for enforcing the due observance of the sabbath.

### MACHINERY.

By 1 Vic. c. 18, §1, it is enacted that the owners of all steam boats, steam cars, and steam carriages, mills, and other buildings where machinery is, or may hereafter be used, shall erect, or cause to be erected, good substantial guards round the machinery of such steam boats, &c. so as to prevent passengers and other persons from coming in contact with such machinery. § 2. It is enacted, that it shall be the duty of the collector of customs of any port to enter steam boats, &c. to examine the guards of the machinery, and if not properly erected so as to secure the safety of persons when the machinery is in operation, the said collector or his deputy shall notify the

same to the master or person in charge, and direct him to make the necessary and substantial guards. § 3. It shall be the duty of every justice of the peace, within the district in which he shall reside and usually act as a justice to enter into or upon all buildings wherein machinery is used, or shall hereafter be erected, and examine the same; and if upon such examination, the guards about such machinery shall be found insufficient, such justice shall notify the same to the owner or occupier of such building, and direct the necessary guards to be erected.

§ 4. In case the master or person in charge of any steam boat, &c., or the owner or occupier of any building wherein machinery is or shall be erected, shall neglect or refuse to comply with the directions of such collector, or justice, and being thereof convicted before one or more justices, he shall forfeit and pay for very such offence any sum not exceeding *one pound*, and in default of payment, with the reasonable costs of conviction, such offender shall be sent to the common gaol of the district within which such offence shall have been committed for any period not exceeding thirty days. § 5. If, upon inspection by the collector or justice, of any steam boat, or building, &c. the guards are found safe and substantial, such collector or justice shall deliver to the person in charge, and to the proprietor of such building, a certificate to that effect, which shall be a good protection for six calendar months, *provided* such safeguards shall be kept in good repair.

By 4 & 5 V. c. 26, § 5, if any person shall unlawfully and maliciously cut, break, destroy, or damage with intent to destroy or render useless, any threshing machine, or any machine or engine, whether fixed or moveable, prepared for or employed in any manufacture whatever (except the manufacture of silk, woollen, linen, or cotton goods, or goods of any one or more of those materials mixed with each other, or mixed with any other material, or any frame work, knitted piece, stocking, hose, or lace), every such offender shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the court, to be imprisoned at hard labour in the Provincial Penitentiary for any term not less than seven years, or in any other prison or place of confinement for any term not exceeding two years.

### MAINTENANCE.

**MAINTENANCE** is an unlawful taking in hand or upholding of quarrels or suits, to the disturbance or hinderance of common right; and is not only *malum prohibitum* both by the common law and by statute, but is also accounted *malum in se*, as having a manifest tendency to oppression by encouraging and assisting

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persons to persist in harrassing their neighbours with suits, which perhaps they would not venture to prosecute of their own accord. It is punishable at common law, by *fine* and *imprisonment*; and by the 32 H. VIII. c. 9, with a forfeiture of £10. A court of record, also, may commit a man for an act of maintenance done in the face of the court, as for a contempt. 2 Inst. 212. 1 Haw. c. 83, § 36. There are some acts of manitenance which, under certain circumstances, are justifiable. A father, a son, or an heir apparent to a party; or the husband of an heiress apparent, may lawfully lay out money for the party to prosecute his suit. Few prosecutions are, however, now instituted for maintenance; for more persons than one are generally implicated in this offence, and then the common practice is, to indict them for *conspiracy*.

# **MALICIOUS INJURY.**

## *Mulicious injury to the person.*

**Poisoning or wounding.**—By 4 & 5 V. c. 27, § 6, whosoever shall administer or cause to be taken by any person any poison or other destructive thing, or shall stab, cut, or wound any person, or shall by any means whatsoever cause to any person any wilful injury dangerous to life, with intent, in any of the cases aforesaid, to commit murder, shall be guilty of felony, and being convicted thereof shall suffer death.

**Attempt to murder.**—§ 10. Whosoever shall attempt to administer to any person any poison or other destructive thing, or shall shoot at any person, or shall by drawing a trigger or in any other manner attempt to discharge any kind of loaded arms at any person, or shall attempt to drown, suffocate, or strangle any person, with intent in any of the cases aforesaid to commit the crime of murder, shall, although no bodily injury shall be effected, be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be imprisoned at hard labor in the Provincial Penitentiary for the term of his natural life, or for any term not less than seven years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years.

**Attempt to maim.**—§ 11. Whosoever shall unlawfully and maliciously shoot at any person, or shall draw a trigger or in any other manner attempt to discharge any kind of loaded arms at any person, or shall stab, cut or wound any person with intent, in any of the cases aforesaid, to maim, disfigure or disable such person, or to do some other grievous bodily harm to such person, or with intent to resist or prevent the lawful apprehension or detainer of any person, shall be guilty of

felony, and being convicted thereof shall be liable, at the discretion of the court, to be imprisoned at hard labor in the Provincial Penitentiary for the term of his natural life, or for any term not less than seven years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years.

**Explosive or corrosive matter.**—§ 12. Whoever shall unlawfully and maliciously send or deliver to, or cause to be taken or received by any person, any explosive substance, or any other dangerous or noxious thing, or shall cast or throw upon or otherwise apply to any person any corrosive fluid or other destructive matter, with intent, in any of the cases aforesaid, to burn, maim, disfigure, or disable any person, or to do some other grievous bodily harm to any person, and whereby, in any of the cases aforesaid, any person shall be burnt, maimed, disfigured or disabled, or receive some other grievous bodily harm, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be imprisoned at hard labor in the Provincial Penitentiary for the term of his natural life, or for any term not less than seven years, or in any other prison or place of confinement for any term not exceeding two years.

**Miscarriage.**—§ 13. Whoever, with intent to procure the miscarriage of any woman, shall unlawfully administer to her, or cause to be taken by her, any poison or other noxious thing, or shall unlawfully use any instrument or other means whatsoever with the like intent, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be imprisoned at hard labor in the Provincial Penitentiary for the term of his natural life, or for any term not less than seven years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years.

**Malicious injury to Property.**

By the 4 & 5 V. c. 26, § 15, if any person shall unlawfully and maliciously break down or otherwise destroy the dam of any fish-pond, or of any water which shall be private property, or in which there shall be any private right of fishery, with intent thereby to take or destroy any of the fish in such pond or water, or so as thereby to cause the loss or destruction of any of the fish, or shall unlawfully or maliciously put any lime or other noxious material in any such pond or water, with intent thereby to destroy any of the fish therein, or shall unlawfully and maliciously break down or otherwise destroy the dam of any mill-pond, every such offender shall be guilty of a misdemeanor, and being convicted thereof shall be punished accordingly.

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§ 17. Unlawfully and maliciously setting fire to agricultural produce, is made felony.—(See title "Arson.") § 18. If any person shall unlawfully or maliciously cut or otherwise destroy any hop binds growing on poles in any plantation of hops, every such offender shall be guilty of felony, and being convicted thereof shall be liable to be imprisoned for any term not exceeding two years.

By the 4 & 5 V. c. 26, § 24, if any person shall wilfully or maliciously commit any damage, injury, or spoil to or upon any real or personal property whatsoever, either of a public or private nature, for which no remedy or punishment is hereinbefore provided, every such person, being convicted thereof before a justice of the peace, shall forfeit and pay such sum of money as shall appear to such justice to be a reasonable compensation for the damage, injury or spoil so committed, not exceeding the sum of five pounds, which sum of money shall, in case of private property, be paid to the party aggrieved, except where such party shall have been examined in proof of the offence, and in such, and in the case of property of a public nature, or wherein any public right is concerned, the money shall be applied in such manner as every penalty imposed by a justice of the peace under this act is hereinafter directed to be applied: *Provided always*, that nothing herein contained shall extend to any case where the party trespassing acted under the fair and reasonable supposition that he had a right to do the act complained of.

See also title "Explosive Substance" and "Summary Conviction."

### MANDAMUS.

A writ of *mandamus* is a command issuing in the King's name from the Court of King's Bench, and directed to any person, corporation, or inferior court of judicature, within the King's dominions, requiring them to do some *particular* thing therein specified, which appertains to their office or duty. This writ is principally used to enforce a civil or municipal right, but it issues also to the judges of any inferior court, commanding them to do justice according to the power of their office, whenever the same is delayed. It is grounded on a suggestion (by the oath of the party injured) of his own right, and of the denial of justice in the court below; whereupon, in order more fully to satisfy the court that there is a probable ground for such interposition, a rule is made (except in some general cases, where the probable ground is manifest) directing the party complained of to shew cause why a writ of *mandamus* should not issue; and if he shews no sufficient cause,

the writ itself is issued at first in the alternative—either to do thus, or signify some reason to the contrary; to which a return or answer must be made at a certain day: and if the inferior judge, or other person to whom the writ is directed, returns or signifies an insufficient reason, then there issues, in the second place, a *peremptory mandamus*, to do the thing absolutely, to which no other return will be admitted but a certain perfect obedience and due execution of the writ. If the inferior judge or other person makes no return, or fails in his respect and obedience, he is punishable for his contempt by attachment; but if at the first he returns a sufficient cause, although it should be false in fact, the Court of King's Bench will not try the truth of the facts upon affidavit, but will for the present believe him, and proceed no further on the *mandamus*. But then, the party injured may have an action against him for his false return, and (if found to be false by the jury) shall recover damages equivalent to the injury sustained, together with a *peremptory mandamus* to the defendant to do his duty.—3 *Bl. Com.* 111.

A *mandamus* to the Quarter Sessions will be granted, to compel them to hear and decide an appeal which they refuse to hear on the ground of a mistaken notion of law, or an unreasonable rule as to their own practice.—*R. v. Wiltshire*, 10 *East*. 404.

Where a person had been convicted before justices of the peace and fined, and on an appeal to the Quarter Sessions the justices there admitted more evidence than had been heard on the conviction, and the accused party was acquitted; but, on receiving the opinion of the attorney-general that the additional evidence should not have been admitted, the justices in sessions confirmed the conviction, and ordered it to be recorded, but took no notice of the acquittal; the court made absolute a rule for a *mandamus* commanding them to enter the acquittal.—*Rex v. Justices of Bathurst*, *D. Mich.* 6 *W. IV.*, *Cameron's D.* p. 49.

A *mandamus* never issues except to admit or restore some person to an ascertained right.—*Barnhart v. Justices H. D. Easter*, 7 *W. IV.*, *Ib.*

Upon a *mandamus nisi* to justices in sessions, they should return the recorded proceedings had before them, and not collateral matters not embraced in the entries of the court.—*Ib.* p. 71.

### MANSLAUGHTER.

By the 4 & 5 *V.c.* 27, § 7, every person convicted of manslaughter shall be liable, at the discretion of the court, to be imprisoned at hard labour in the Provincial Penitentiary for

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life, or for any term not less than seven years, or be imprisoned in any other prison or place of confinement for any term not exceeding two years, or to pay such fine as the court shall award.

See also *ante* title "Homicide," p. 357.

### MANUFACTURES.

By the 4 & 5 V. c. 26, § 4, if any person shall unlawfully and maliciously cut, break or destroy, or damage with intent to destroy, or to render useless, any goods or articles of silk, woollen, linen or cotton, or of any one or more of those materials mixed with each other, or mixed with any other material, or any frame-work, knitted piece, stocking, hose or lace, being in the loom or frame, or on any machine or engine, or on the racks or tenters, or in any stage, process or progress of manufacture, or shall unlawfully and maliciously cut, break or destroy, or damage with intent to destroy, or to render useless, any warp or shute of silk, woollen, linen or cotton, or of any one or more of those materials mixed with each other, or mixed with any other material, or any loom, frame, machine, engine, rack, tackle or implement, whether fixed or moveable, prepared for or employed in carding, spinning, throwing, weaving, fulling, shearing, or otherwise manufacturing or preparing any such goods or articles, or shall by force enter into any house, shop, building or place, with intent to commit any of the offences aforesaid; every such offender shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the court, to be imprisoned, at hard labour, in the Provincial Penitentiary, for any term not less than seven years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years.

### MARRIAGES.

By 33 G. III. c. 5, certain marriages previously contracted, are declared to be valid, and provision is made for preserving the testimony of such marriages within three years from the date of this act. § 3. And until there shall be five ministers or parsons of the church of England, doing duty in their parishes or places of residence in any one district, parties desirous of intermarrying, and neither living within eighteen miles of any parson or minister, may apply to a neighbouring justice, who may cause to be affixed, in some public place within each of the townships or parishes wherein the parties reside, the following notice (see *one shilling*):—

Whereas A. B. of —, and C. D. of —, are desirous of intermarrying with each other; and there being no parson or minister of

the church of England living within eighteen miles of them, or either of them, all persons who know any just impediment why they should not be joined in matrimony, are to give notice thereof to E. F. esquire, of —, one of her Majesty's justices of the peace for the — district.

And if no valid objection shall have been made for three intervening Sundays, the magistrate may solemnize the marriage, according to the form of the church of England, and give the parties the following certificate (see *one shilling*):

Whereas A. B. of —, and C. D. of —, were desirous of intermarrying with each other, and there being no parson or minister of the church of England living within eighteen miles of them, or either of them, they have applied to me for that purpose: Now these are to certify, that in pursuance of the powers granted by an act of the legislature of this province, passed in the thirty-third year of his Majesty's reign, I, E. F., one of his Majesty's justices of the peace, having caused the previous notice by the statute required to be given, have this day married the said A. B. and C. D. together, and they are become legally contracted to each other in marriage.

Which certificate shall be signed by the parties, and two or more persons present at the marriage. The clerk of the peace, upon application, is required to register the said certificate (see 2s.); and such register, or an attested copy (see 2s.), shall be sufficient evidence in courts of law. § 5. The power of justices to solemnize marriages shall determine so soon as there shall be five parsons or ministers resident in any one district; and any justice of the peace pretending to perform the ceremony afterwards, shall forfeit £20, one moiety to the province, and the other to the informer; and such pretended marriage to be void.

By 38 G. III. c. 4, § 1, it shall be lawful for the minister or clergyman of any congregation or religious community of persons, professing to be members of the church of Scotland, or Lutherans, or Calvinists, who shall be authorised in manner directed by this act, to celebrate the ceremony of matrimony according to the rites of such church or religious community, between any two persons (not under legal disqualification), and one of whom shall have been a member of such congregation or religious community at least six months before such marriage. § 2. No person shall be deemed a minister or clergyman within the meaning of this act, who shall nor have been regularly ordained according to the rites and forms of such congregation or religious community, and unless he shall have appeared before the justices assembled in Quarter Sessions in the district where he shall reside, when not less than six magistrates besides the chairman shall be present, and shall have then with him at least seven respectable persons, members of such con-

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gregation or community, who shall declare him to be their minister or clergyman; and unless he shall have proofs of his ordination or appointment; and shall then and there take the oath of allegiance—when the majority of the magistrates then present may, if they think expedient, grant him a certificate in the form prescribed by the act. § 6. All marriages which may have been celebrated since the passing of the \* 33 G. III. c. 5, by any person who shall obtain such certificate as aforesaid, between any two persons (one being a member of such congregations), shall be deemed good and valid.

By the \* 59 G. III. c. 15, a further period of three years is given to persons neglecting to avail themselves of the benefit of the \* 33 G. III. c. 5, for preserving the testimony of their marriage.

\* By 2 G. IV. c. 11, if any person, minister or clergyman, legally authorised to solemnize marriage, shall knowingly or wilfully solemnize marriage without publication of banns, unless license of marriage be first had and obtained from some person duly authorised to grant the same; or if any justice of the peace shall knowingly solemnize marriage contrary to law; or if any person not having authority by law to solemnize marriage shall marry any person within the same, such offender shall be guilty of a misdemeanor. Such offence not to be cognizable at the Quarter Sessions; and no prosecution to be commenced after two years. § 2. In all prosecutions under this act, the proof of *legal authority* shall lie upon the defendant.

\* By 11 G. IV. c. 36, entitled "An act to make valid certain marriages heretofore contracted, and to provide for the future solemnization of marriage in this province," it is enacted,—§ 1, That marriages of persons (not under any canonical disqualification) publicly contracted in this province (U. C.) before any justice of the peace, magistrate, or commanding officer of a port, or before any minister or clergyman, before the passing of this act, shall be confirmed and made valid. § 2 provides for preserving testimony of such marriages at any time within six years, in the manner prescribed; in case of subsequent marriage, the former marriage, if illegal, not to be valid by this act. § 3. It shall be lawful for any clergyman or minister of any church, society, congregation, or religious community of persons, professing to be members of the church of Scotland, Lutherans, Presbyterians, Congregationalists, Baptists, Independents, Methodists, Menonists, Tunkers or Moravians, who shall be authorised in manner hereinafter mentioned, to solemnize the ceremony of marriage within this province between any two persons, neither of whom shall be under any legal disqualification to contract matrimony. § 3.

No person shall be deemed a clergyman or minister of such church, society, congregation, or religious community, who shall not have been regularly ordained, constituted or appointed, according to the rites and forms of such church, society, congregation or religious community; nor unless he shall be a subject of her Majesty, and shall appear before the justices, in sessions of the district, and produce proof of his ordination, constitution or appointment, and shall then and there take the oath of allegiance; and thereupon, if it shall appear to the majority of the justices then present that he has been regularly ordained, &c. they are hereby authorised and required to grant him a certificate, in the form following:—

Be it remembered, that at the General Quarter Sessions of the peace holden at — in and for the district of —, on the — day of —, in the year of our Lord —, before A. B. and others, esquires, justices of our sovereign lady the Queen, assigned to keep the peace in the said district, came C. D. of —, who professes to be a minister or clergyman of the church, society, congregation, or religious community, (as the case may be) it appeared to a majority of the justices that he the said C. D. was duly ordained, constituted or appointed (as the case may be) a minister or clergyman of the said church, society, congregation, or religious community.

G. H. Clerk of the Peace.

E. F. Chairman.

For which certificate, the clerk of the peace shall be entitled to 5s. § 5. No such minister shall at any time celebrate marriage unless banns of marriage be published with an audible voice in the church or chapel or place of worship, three several Sundays, in some intermediate part of the service, or before it began, or immediately after it ended, together with the number of times of publication; or unless a marriage license shall have been obtained from the Governor. § 6. Every minister or clergyman, or justice of the peace, authorised by this act to celebrate marriage, shall, if required, give to the party a certificate; and also, once in every twelve months, return a certified list of all marriages by him solemnized, to the clerk of the peace, within that period, or since his last return, specifying the names of the parties married, the witnesses, and whether solemnized by license or banns; and shall pay to the clerk of the peace the sum of 2s. 6d. to record the same, who shall record the same in the register or book required by law to be kept by him, of marriages; and such register, or a certified copy, shall be considered, in case of death or absence of the witnesses, a sufficient evidence thereof; and any minister, clergyman, or justice of the peace, neglecting to make such return, shall forfeit £40, to be recovered by action of debt in the Court of King's Bench, one moiety to the informer and the other to the province.

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FORM OF A CERTIFIED LIST OF MARRIAGES, TO BE RETURNED TO THE CLERK OF THE PEACE, PURSUANT TO THE 11 G. IV. c. 36.

A list of all Marriages solemnized by me A. B., one of her Majesty's Justices of the Peace for the county of —, [or a Minister, &c., stating the particular denomination, at —], commencing the — day of —, and ending the — day of —

Names of the parties, and their residence.	Place in which the ceremony is performed.	Date of Ceremony.	By license, license, or usual notice.	Names of Witnesses present.
John Thomas, of —, in the county of —, gentleman; and Mary Griffiths, of the City of Toronto, in the county of York.	At the City of Toronto, in the county of York.	12th August, 1860	By license.	Charles Edwards, of —, in the county of —, merchant; and Richard Hughes, of the City of Toronto, merchant.

By 8 V. c. 34, all the powers, privileges and advantages by the 11 G. IV. c. 36, conferred upon or vested in any clergyman or minister of any of the denominations mentioned in the third section of the said act, are conferred upon and vested in any clergyman or minister of the denomination called *The Evangelical Association*, subject to the like penalties.

By 10 & 11 V. c. 18, the like powers are conferred upon and vested in any clergyman or minister of any religious denomination of Christians whatever. § 2. No clergyman or minister of any of the denominations referred to in the third section of 11 G. IV. c. 36, or of those to whom this act refers, shall be entitled to the benefit of said acts, unless he be a British subject, and shall have taken the oath or affirmation of allegiance before the registrar of the county, and shall at the same time produce to such registrar evidence of his being a recognized clergyman of the denomination to which he professes to belong. § 4. This act not to affect the authority to celebrate marriage now vested in any person under the provisions of 11 G. IV. c. 36.

## MARRIED WOMEN.

By \*59 G. III. c. 3, any married woman above the age of 21 years, with the knowledge and consent of, and by any deed or deeds jointly with, her husband, may alien and convey her real estate to such uses as to her and her husband shall seem meet. § 2. Provided, that such married woman, if resident in Upper Canada, shall appear before a judge, or other person mentioned and described in the \*43 G. III. c. 5 (repealed by \*1 W. IV. c. 2), or being a resident of Great Britain or Ireland, or any colony belonging to the crown of Great Britain, shall appear before the mayor or chief magistrate of any city, borough or town corporate in Great Britain or

Ireland, or the chief justice, or any of the judges of the supreme court in any such colony, and be examined by such officer touching her consent, and shall freely and voluntarily consent. § 3. Such mayor or chief magistrate, &c., may thereupon cause a certificate to be endorsed on the deed, stating the day on which such examination was made, and signed by such mayor, &c. And by § 4, all such examinations and certificate, &c., must be made within twelve months after the execution of the deed. § 5. And the seal of the city, borough or town corporate, must be affixed.

By the \*2 G. IV. c. 14, it shall be lawful for any married woman, having such real estate, to appear before the Quarter Sessions in the district in which she may be resident, or in cases where the party resides out of the province, then before the General Quarter Sessions of any district, within twelve months after the execution of the deed, to make such acknowledgment; and the chairman may certify in like manner as by the Court of King's Bench, or any judge thereof.

By the \*1 W. IV. c. 2, reciting that the laws now in force were insufficient, and unnecessarily exposed purchasers to risk, from the chance of married women dying, or retracting consent after execution of the deed; it is enacted, that it shall be lawful for any such married women, above 21 years of age, to alien and convey her real estate jointly with her husband; provided that the deed be executed in the presence of one of the judges of the King's Bench, or a judge of the district court, or of a judge of the surrogate court of the district where such married woman shall reside; or of two justices for such district, who shall examine such married woman apart from her husband respecting her free and voluntary consent; and shall on the day of the execution of such deed endorse the following certificate on the deed, or to the like effect.

That on the day mentioned in the certificate, such married woman did appear before him, or them (*as the case may be*), at the place to be named in the said certificate, and being examined by him, or them (*as the case may be*), apart from her husband, did appear to give her consent to depart with her estate in the deed mentioned freely and voluntarily, and without any coercion, or fear of coercion on the part of her husband, or of any other person or persons whatsoever.

§ 2. And when any married woman shall reside out of the province, the deed may be executed by her in the presence of a judge of the King's Bench; or of the district or surrogate court; or of two justices in any district, whose certificate shall be effectual; and it shall not be necessary for any such judge or justices to attest the deed. § 3. And where married women have heretofore conveyed their estates, but no certificate has

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By the that from bargains performance whether such proof, be provided t § 2. After thereby en during the ment of su without per whom he v the lawful such service or i complaint o him, be li manner he boarding-ho any servant vagant or h proof of the in addition other person in after prov servant or boarding-ho any greater tender of w apparel sh amount due that this sh labourer. receive the any contrav cause all p and to hear ditious ma offence alle 2 x



been obtained, such certificate may nevertheless be obtained notwithstanding the twelve months have expired. § 5. The sum of five shillings to be paid for such certificate.

And see title "Dower."

## MASTER AND SERVANT.

By the 19 & 11 V. c. 23, § 1, it is enacted as follows, viz.: that from and after the passing of this act, all agreements or bargains between masters and servants or labourers, for the performance of any duties or service of whatsoever nature, whether such agreement be verbal or written, shall, upon due proof, be binding on each party for the due fulfilment thereof; provided that such verbal agreement shall not exceed one year.

§ 2. After any such agreement entered into, any person having thereby engaged to perform any service or work, and who shall during the period of such engagement, and after the commencement of such employment, refuse to go to work, or who shall, without permission or discharge, leave the employ of the party whom he was engaged to serve, or who shall refuse to obey the lawful commands of the person under whose direction such services are to be performed, or who shall neglect the service or injure the property of such employer, shall, upon the complaint of such employer or any person in charge under him, be liable to punishment for every such offence, in the manner hereinafter provided. § 3. If any tavern-keeper, boarding-house keeper or other person shall induce or persuade any servants or labourers to confederate for demanding extravagant or high wages, and prevent their hiring them, upon due proof of the offence such tavern-keeper shall forfeit his license in addition to any fine, and such boarding-house keeper or other person shall be subject to fine or imprisonment, as hereinafter provided. § 4 enacts that the wearing apparel of any servant or labourer shall not be kept by any tavern-keeper or boarding-house keeper in pledge for any expense incurred to any greater amount than £1 10s. currency, on the payment or tender of which sum, or of any larger sum due, such wearing apparel shall be immediately given up, whatever be the amount due by such servant or labourer: Provided always, that this shall not apply to other property of such servant or labourer. § 5. Any one or more justices of the peace may receive the complaint, upon oath, of parties complaining of any contravention of the preceding provisions of this act, and cause all parties concerned to appear before him or them, and to hear and determine the same in a summary and expeditious manner, and to punish parties found guilty of the offence alleged by fine or imprisonment, allowing such costs

as may be legal and just; and all fines imposed by this act shall be paid to the treasurer of the district, town or city in which such conviction may be had, to be applied to the general uses of such district, town or city respectively: Provided always, that no fine shall be imposed exceeding £5.; and no imprisonment shall exceed one month, nor less than one day.

§ 6. In every case of a summary conviction under this act, where the penalty shall not be paid either immediately after conviction or within such period as the justice shall at the time of conviction appoint, it shall be lawful for the convicting justice to commit the offender to the common gaol of the district where conviction had, there to be imprisoned for the time limited by such conviction.

§ 7. Any person offending against the provisions of this act may be prosecuted, convicted and punished in any district where found.

§ 8. Any one or more such justices, upon the oath of any such servant or labourer, against his master or employer, concerning any misusage, refusal of necessary provisions, cruelty, ill-treatment or nonpayment of wages, may summon such master or employer to appear before him or them at a reasonable time to be stated in such summons; and he or they, or some other justice or justices, shall, upon proof on oath of the personal service of such summons, examine into the matter of such complaint, whether such master or employer shall appear or not; and upon due proof of the cause of such complaint, he or they may discharge such servant or labourer from his service or employment, and direct the payment to him of any wages found to be due, not exceeding £10, and make such order for payment thereof as shall seem just, with costs; and in case of nonpayment for the space of twenty-one days after such order made, such justice or justices may issue his or their warrants of distress for levying such wages, costs and distress.

§ 9. Any party aggrieved may appeal to the Quarter Sessions holden not less than twelve days after conviction, upon giving notice in writing to the complainant of such appeal within three days after conviction and seven clear days before such sessions, and he shall, in case of conviction, either remain in custody until the sessions, or enter into recognizance, with two sufficient sureties, before a justice of the peace, and in the case of such order shall enter into a like recognizance personally to appear at the said sessions, and try such appeal, and abide the judgment of the court, and pay such costs as shall by the court be awarded; and upon such notice being given, and recognizance entered into, the justice before whom the same shall be entered into shall liberate such person if in custody: and the sessions shall hear and determine such appeal, and make such order therein, with or without

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costs, to either party, as to the court shall seem meet: and in case of the dismissal of the appeal, or affirmance of the conviction or order, shall order or adjudge the offender to be punished according to the conviction; or enforce the order for payment of wages, or of dismissal from service, and to pay such costs as shall be awarded, and shall if necessary issue process for carrying such judgment into effect. § 10. Interpretation clause: the word "party to include any person or persons, body or bodies politic or corporate; and all words importing the singular number or masculine gender, shall include several persons, matters or things of the same kind, as well as one person, &c., and females as well as males.

For form of conviction see \* 2 W. IV. c. 4—*ante* p. 200.

### MILITIA.

By 9 V. c. 23, reciting that it was expedient to amend and consolidate the laws of this province relating to the militia thereof, the 4 & 5 V. c. 2, and the 8 V. c. 51, are repealed. § 2 enacts that the militia of this province shall consist of the male inhabitants thereof over 18 and under 60 years of age, being natural born subjects of her Majesty, or naturalized and having resided more than six months in this province; and the militia shall be divided into two classes, and all such persons between 18 and 40 shall form the first class, and those between 40 and 60 shall form the second class. § 3. Officers of the militia to be appointed by the governor. The act contains sundry provisions for the regulation of the militia, to which the reader is referred,—and amongst others—

By § 8, each and every person belonging to either class of militia men shall enrol himself with the captain or other officer commanding the company within the limits of which such militiaman shall then reside, on some one of the first *twenty days* of the month of June in each and every year, and shall in so enrolling himself, state his name, age and residence, and whether he is married or unmarried; and the captain or other officer commanding such company shall cause such enrolment to be made, and shall give at least ten days' previous notice of the day or days (within the period aforesaid), and of the place within the company's division on and at which he or some other officer will attend for the purpose of making such enrolment.

§ 20 enacts that militiamen may provide substitutes when the militia is called out for service. § 28. Militia (first class) to be assembled for training yearly on the 29th June. § 30. The following persons are exempt from serving in the militia, viz.:

The judges of the Court of Queen's Bench—vice chancellor, and judges of the Court of Vice Admiralty—judges of the circuit and district courts, and commissioners of bankrupts—clergy and ministers of all denomina-

tions—the professors in any college or university—the keepers and guards of the Provincial Penitentiary—and, except in time of war, invasion or insurrection, but not from enrolment, the following persons, viz.: the members of the Executive and Legislative Councils—members of the Legislative Assembly—officers of the said Councils and Assembly—Attornies and Solicitors General—Provincial Secretary and assistant secretaries—all civil officers holding appointments under the great seal—all persons lawfully authorised to practise physic or surgery—all advocates, barristers, solicitors or attornies—notaries in Lower Canada—half-pay and retired officers of her Majesty's army and navy—post-masters and mail-carriers—seafaring men actually employed in the line of their calling—masters of the public or common schools—ferry-men—one miller for each run of stones in every grist mill—keepers of public toll-gates—lock-masters and laborers employed in attending to locks or bridges on public canals—members of fire companies and of hook and ladder companies—constables and officers of the courts of justice—students attending seminaries, colleges, schools and academies, six months previous to being called upon for militia duty—all persons disabled by bodily infirmity. § 31. Quakers, Menonists and Tunkers, on payment of 5s. per annum, and in case of war a sum not exceeding £20.

§ 39. Any officer of militia in time of peace guilty of wilful neglect, or disobedience, of orders, or any act of insubordination, shall on conviction be liable to a fine of not less than £2 10s. nor more than £20, besides costs, or to be dismissed the service, at the discretion of the court before whom he shall be tried.

§ 40. Any militiaman in time of peace guilty of wilful neglect or disobedience of orders at any time, or of any act of insubordination or misconduct while on parade or engaged in the performance of militia duty, shall on conviction incur a fine of not less than 5s. nor more than 10s. over and above the costs of conviction; and in default of payment, and if sufficient distress *de to* (a) found, shall be liable to imprisonment in the common gaol of the district for a term not less than six days nor more than one month, unless the fine be sooner paid.

§ 42. Every person, whether he be or not in the militia, and although liable to be tried for the offence by court martial, who, at any time, shall sell, barter or pledge, or tender in sale, barter or pledge, or unlawfully make away with any part of the arms or equipments of the said militia force, or any ammunition or stores; and every person who shall buy, or by barter or pledge obtain, or who shall otherwise unlawfully receive, take or detain any portion of the said arms or equipments, or ammunition or stores,—shall be deemed guilty of a *misdemeanor* upon conviction for such offence before any court of competent jurisdiction, and be liable to be punished accord-

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ingly. § 57. Any person who shall use menacing words, signs or gestures in presence of any court martial, or shall cause any disorder or riot so as to disturb its proceedings, shall be liable to be imprisoned upon the warrant of the president of the court, in the common gaol of the district, for any period not exceeding *eight* days, at the discretion of such court martial. § 59. All persons imprisoned under sentence or order of any court martial, in time of peace, shall by the warrant of the president of such court martial, under his hand and seal, specifying the cause of the committal of such persons, be committed to the common gaol of the district in which such court martial shall be held, and upon such warrant shall be received and kept by the gaoler for the period therein mentioned. § 60. If any person shall wilfully interrupt or molest any portion of the said militia force whilst on lawful duty, it shall be lawful for the officer present and in command thereof to cause such person to be arrested and taken under guard of any one or more militiamen before any one of her Majesty's justices of the peace, who, after complaint made upon oath, shall, upon summary conviction, sentence such offender to pay a fine not exceeding 10s., or in default of payment and of sufficient distress, may commit the offender for a period not exceeding *eight* days to the common gaol of the district, if the fine be not sooner paid. § 62 provides for billeting the militia when on a march on the inhabitant householders: and every such inhabitant householder who shall refuse to receive the troops so billeted, or to furnish them with lodging and necessaries, shall for every such offence forfeit and pay a sum not exceeding 40s. § 64. Carriages, horses or oxen to be furnished by the inhabitants when the militia is in cantonment, under a penalty not exceeding 40s. for refusal or neglect; such carriages, &c., not compellable to proceed over thirty miles. § 65. Boats and craft for water conveyance to be also furnished by the owners, at the *usual* rate, to be fixed by the justice, under a penalty not exceeding £5 for neglect or refusal, and *impressment* of such boats or craft. § 66. Any officer guilty of partiality in exempting any person from service, or misusing the power in the *five* previous sections, shall incur a penalty not exceeding £5, to be recovered before any two justices of the peace, or may be tried by court martial. § 67. No person dismissed from her Majesty's army or navy by sentence of a general court martial, shall hold a commission in the militia of this province. § 68 enacts that the penalties imposed by this act, and for the recovery of which special provision is not hereinbefore made, may be recovered and enforced before any *two* or more justices of the peace nearest to the place wherein





§ 2. Every such apron shall be erected and constructed in the following manner, viz. : such apron shall not be less than eighteen feet wide, by an inclined plane of twenty-four feet eight inches, to a perpendicular of six feet, and so, in proportion to the height, where the width of the stream will admit ; and where such stream or dam is less than fifteen feet wide, the whole dam shall be aproned in like manner, and with the same inclined plane.

By the 4 & 5 V. c. 26, § 15, if any person shall unlawfully and maliciously break down or otherwise destroy the dam of any mill-pond, every such offender shall be guilty of a misdemeanor, and being convicted thereof shall be punished accordingly.

See title "Punishment."

By 12 V c. 87, § 1, aprons or slides to mill-dams shall be altered or constructed so as to afford depth of water sufficient to admit of the passage of saw logs, lumber and timber, such as are usually floated down such streams or rivers whereon mill-dams are erected : But proprietors may construct a waste-gate, or put up brackets and slash-boards across any such apron to prevent unnecessary waste of water, where not required to pass or float any craft, lumber or saw logs over such apron ; but not until such craft, &c., shall have gained the main channel of the stream : Provided also that no person shall be required to build such aprons or slides on small streams, unless required for rafting or floating down lumber and saw logs. § 2. No apron to any mill-dam on the river

*Otonabee* to be less than thirty-two feet wide by an inclined plane of five feet to a perpendicular of one foot, and side pieces of at least one foot in height shall be fixed on the outsides of every such apron. § 3. Any owner or occupier of any dam neglecting to comply with this act, shall pay a penalty of 10s.

a day, to be recovered before any two justices of the district, on the oath of two or more witnesses, and levied by distress and sale of the offender's goods. § 4. Damages to any apron to be repaired as soon as the state of the stream will permit ; and on failure, the owner or occupier shall be liable to the penalty aforesaid. § 5. It shall be lawful for all persons to float saw logs and other timber, rafts and craft, down all streams in Upper Canada during the Spring, Summer and Autumn freshets. Persons so using such stream are not to alter, injure or destroy any dam or other useful erection across any such stream, or do any damage thereto on the banks of the stream : Provided there shall be a convenient apron, slides, gate, lock, or opening in any such dam, or other structure made for the passage of saw logs and other timber, rafts and crafts, floated down as aforesaid.

§ 6. It shall be lawful for all persons to float saw logs and other timber, rafts and craft, down all streams in Upper Canada during the Spring, Summer and Autumn freshets. Persons so using such stream are not to alter, injure or destroy any dam or other useful erection across any such stream, or do any damage thereto on the banks of the stream : Provided there shall be a convenient apron, slides, gate, lock, or opening in any such dam, or other structure made for the passage of saw logs and other timber, rafts and crafts, floated down as aforesaid.

## MILLERS.

\*By 32 G. III. c. 7, no miller shall demand, take or receive, more than a twelfth share or part for grinding and bolting of grain, under a penalty of £10 Quebec currency; one moiety to the King and the other to the person that shall sue for the same in any court of record. § 3. No miller shall be answerable for the loss of any bag of grain or flour, unless the initials of the christian and surname of the owner be marked thereon, and such mark of distinction previously communicated and made known to the said owner or occupier, or his servant attending the mill.

See also, title "Flour," p. 302.

## MILLS.

By 13 V. c. 75, in any action to be brought against the proprietor or occupier of any mill, for the overflowing or injury to any land caused by the erection or continuation of any dam for the purposes of such mill, built before the purchase by, and grant of such land to the grantee of the crown, if it shall appear that such purchaser obtained the land at a reduced price, or was otherwise indemnified in consequence thereof, then the jury may take the same into consideration, and if they think it just and equitable, may find a verdict for the defendant.

## MISDEMEANOR.

The word misdemeanor, in its usual acceptation, is applied to all those crimes and offences for which the law has not provided a particular name; and they may be punished according to the degree of offence, by fine or imprisonment, or both.—3 *Burns' Jus., tit. Misdemeanor; Russel on Cr. and Misd.* 43. A misdemeanor is, in truth, any crime less than a felony; and the word is generally used in contradistinction to felony; misdemeanors comprehending all indictable offences which do not amount to felony.—4 *Bl. Com.* 5, note 2. All disturbances of the peace, oppressions, misbehaviour by public officers, and all other misdemeanors whatsoever, of a public evil example, against the common law, may be indicted.—2 *Haw. P. C.* 25, § 4. And whatever openly outrages decency, and is injurious to public morals, is a misdemeanor at common law.—4 *Bl. Com.* 65, (n) *Ed.* And wherever a statute forbids the doing of a thing, the doing it wilfully, although without any corrupt motive, is indictable as a misdemeanor.—*R. v. Sainsbury*, 4 *T. R.* 457. So, if a statute enjoin an act to be done, without pointing out any mode of punishment, an indictment will lie for disobeying the injunction of the legislature.—*R. v. Davis*, *Sey.* 138. Where a statute making a

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new offence only inflicts a forfeiture, and specifies the remedy, an indictment will not lie.—*R. v. Wright*, 1 Burr. 543. The true rule is stated to be this: Where the offence was punishable by a common law proceeding before the passing of a statute which prescribes a particular remedy, by a summary proceeding, then either method may be pursued, as the particular remedy is *cumulative*, and does not exclude the common law punishment; but where the statute creates a new offence, by prohibiting and making unlawful anything which was lawful before, and appoints a particular remedy against such new offence by a particular method of proceeding, such must be pursued, and no other.—*Russ. Cr. Misd.* 49.

Every attempt to commit a felony is a misdemeanor; and, in general, an attempt to commit a misdemeanor is an offence of the same nature.—*R. v. Scofield*, Cald. 397. So also, an indictment or solicitation to commit a crime, is a misdemeanor; as in the case of one Higgins, who was indicted for having incited and solicited a servant to steal his master's property. The servant was honest, and informed his master, and no theft was committed: Higgins was found guilty, and sentenced by the court to two years' imprisonment, and to stand once in the pillory: Lord Kenyon observing, that the bare solicitation to commit a crime was a misdemeanor, though the crime was not committed.—*R. v. Higgins*, 2 East. 5.

### MISPRISION OF FELONY.

Misprision of felony is the concealing of a felony which a man knows, but never consented to (for if he consented, he is either a principal or accessory in the felony), and consequently guilty of misprision of felony, and more.—1 H. H. 374. The punishment of misprision of felony in a common person, is fine and imprisonment; in an officer, as sheriff or bailiff of liberties, imprisonment for a year, and ransom at the King's pleasure, by the stat. 3 Edw. I. c. 9. If any person will save himself from the crime of misprision of felony, he must discover the offence to a magistrate, with all the speed he can.—3 Inst. 140.

MONEY. See title "Coin."

### MORTGAGES.

By 12 V. c. 74, mortgages of goods and chattels, not accompanied by immediate delivery and followed by an actual and continual change of possession, shall be void as against creditors, subsequent mortgagees and purchasers, unless a true copy of such mortgage, with an affidavit of due execution by

a subscribing witness thereto, be filed in the office of the clerk of the district court, and such filing to be renewed *annually* within thirty days after the expiration of the year, together with a statement of the mortgagee's interest therein; and by 13 & 14 V. c. 62, every *sale* of goods and chattels, not accompanied by immediate delivery and continued possession, shall be in writing; and such mortgages and sales shall be accompanied with an affidavit of the mortgagee or bargainee to the effect that the mortgagor is justly and truly indebted to the mortgagee in the sum mentioned in the mortgage, and that it was executed in good faith, and for securing the amount due, and not for the purpose of protecting such goods and chattels against creditors; and in case of an absolute *sale*, that the same is *bona fide*, and for good consideration, &c., otherwise such mortgage or sale shall be void.

### MUNICIPAL CORPORATIONS.

The provisions of the General Municipal Act, 12 V. c. 81, antecedent to the following clauses, have been distributed for convenience of reference and perspicuity in other parts of this work, under their respective titles, of "Counties," "Cities," "Towns," "Townships," "Police" and "Villages."

The following sections, including the amendments made by the 13 & 14 V. c. 64 (a), being of a general nature, are therefore given in this place, commencing with § 108, and are styled

#### MISCELLANEOUS PROVISIONS.

**Head Officers.**—§ 108 enacts that the warden of each county shall be the head of the municipal council of such county—the mayor of a city or town, the head of their respective corporations—and the town-reeve of each township and village, the head of the same respectively. § 109. The head of every such municipal corporation shall be *ex officio* a justice of the peace within his locality.

**Vacancies.**—§ 110.—The absence of any such head for three calendar months, without leave, shall be a vacancy of office, and such vacancy shall be supplied by a special meeting of the corporation within three days after such vacancy. § 111. The head of any corporation may resign, with the consent of such corporation. § 112. Any corporate member becoming bankrupt or insolvent, or compounding with his creditors, shall cease to hold office; and such vacancy shall be filled up in case of death.

(a) The words between the brackets [ ] show the amendments.

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**Oaths.**—§ 113. The head or chairman of corporations may administer oaths to accounting parties.

**Proclamation.**—§ 114. Notwithstanding proclamation issued for incorporating any village, town, &c., the existing municipal authority shall continue to exercise their powers until the fourth Monday in January next after the end of three calendar months from the *teste* of such proclamation.

**Boundaries, Trades, &c.**—§ 115. The Governor in council may enlarge the boundaries, and make a new division of the wards of any town or village, on the petition of the corporation.

§ 116. Municipal corporations not to grant exclusive rights to exercise trades or callings.

**Taverns, &c.**—§ 117. The police magistrate (when appointed) shall have the power of licensing taverns, &c. [and when there is no police magistrate, such power under such by-law as aforesaid shall be vested in the mayor of such town or city].

§ 118. The mayor or police magistrate, with any two aldermen or justices of the peace for any town or city erected under this act [and the town reeve of any township or incorporated village, with any two justices of the peace for the county, are empowered on complaint to any of them upon oath, of any riotous or disorderly conduct in any inn, tavern, ale or beer house, to summon the parties, investigate the matter, and dismiss the same, with costs, or convict the offender and abrogate his license, or suspend the same for a period not exceeding sixty days.]

**Affirmation.**—§ 119. Allowed to be made in lieu of oath in authorised cases.

**Collectors' Rolls.**—§ 120. To contain the amount of the assessed value of the real and personal property of each person on the roll.

**Voters, official oaths, &c.**—§ 121. To be British subjects and of full age. § 122. Voters whose names appear on the collector's roll for the requisite amount, may vote at municipal elections without any other oath than that he is the party on the roll, and that he is of full age, and is a British subject, a resident, and has not before voted at such election. § 123.

False swearing to be perjury. § 124. Returning officer authorised to administer such oath. § 125. Heads of corporations, aldermen and justices of the peace for towns, and every county, city, town and village clerk authorised to administer oaths relating to the business of their respective localities: the same to be filed by the party administering the same in the office of such county clerk, &c., within eight days after, on pain of *misdemeanor*. § 126. Oaths may be administered by the heads of corporations to parties and

witnesses in any disputed road matter pending before such corporation. § 127. Municipal officers, clerks, constables, assessors and collectors, to take the following oath before entering on the duties of their office.

I., A. B., do solemnly swear (or affirm, *where the party is entitled to affirm instead of to swear*) that I will truly, faithfully and impartially, to the best of my knowledge and ability, execute the office of (*inserting the name of the office*) to which I have been elected (*or appointed*) in this township (*county, &c.*), and that I have not received, and will not receive any payment, or reward, or promise of such, for the exercise of any partiality or malversation, or other undue execution of the said office. *So help me God.*

And in default thereof shall forfeit £10 to her Majesty, with costs, as adjudged by the court. § 128. Heads of corporations to be sworn by the highest court of law or equity at the time sitting within the locality; or by the Chief Justice, or other judge at chambers; and if no such court or judge within the limits, then before the Recorder, or Police Magistrate of such city, &c., or any justice of the county, or town, over which such corporation shall have jurisdiction; or in case of townships and villages, by any county justice; and if no such court, &c., then before the clerk of such corporation, in the presence of a meeting of the same.

**Oath of qualification.**—§ 129. Oath of qualification by persons appointed under this act, requiring qualification, to be as follows, viz.:

I., A. B., do swear (or affirm, *when the party is entitled to affirm instead of swear*) that I am a natural born (or naturalized) subject of her Majesty; that I am truly and *bona fide* seized to my own use and benefit of such an estate (*specifying the nature of such estate, and if land, designating the same by its local description, rents, or otherwise*) as doth qualify me to act in the office of (*naming the office*) for (*naming the place for which such person is appointed or elected*) according to the true intent and meaning of a certain act of the parliament of this province, passed in the — year of the reign of her Majesty Queen Victoria, chaptered (*inserting the chapter of this act*) and intitled “An Act, &c. (*inserting the title of this act*). *So help me God.*

§ 130. Refusal to take office within twenty days after election and notice, or refusal to administer the oath of office, to incur a penalty of not more than £20, nor less than £2, to the use of her Majesty; persons serving the year previous exempt.

**Exemptions.**—§ 131. All persons over 60, members of the Legislative Council or Assembly, officers of the crown (civil or military) on full pay, judges, sheriffs, coroners, gaolers, keepers of houses of correction, persons in priest's orders, clergymen and ministers of the gospel of any denomination;

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members of the law society, students or barristers, attorneys and solicitors, in practice; officers of courts of justice, members of the medical profession; professors, masters, teachers and other members of any university, college, or school, in Upper Canada, and all officers and servants thereof; and all millers; firemen belonging to any regular fire company; shall be free and exempt from any corporate office whatsoever.

**Disqualification.**—§ 132. No judge of any court of civil jurisdiction; naval or military officer on full pay; no person receiving any allowance from any township, county, village, town or city (except as councillor, or in capacities incident thereto); no person having any interest in any contract with or on behalf of the township, &c., where he shall reside, shall be qualified to be elected alderman or councillor for the same, or for any ward therein. § 133. No councillor or alderman shall be qualified to be assessor, nor shall any person be appointed assessor unless seised or possessed of property sufficient to qualify for councillor.

**Assessors.**—§ 134. One assessor may be appointed for more than one ward.

**Justices of the peace.**—§ 135. Justices of the peace for any town to have the like qualification and take the same oaths as other justices. But no warden, mayor, recorder, police magistrate, or alderman of any city, mayor or police magistrate of any town, or town reeve, shall require any property qualification to enable him to act as a justice, nor any other oath required of him than his oath of office.

**Coroners.**—§ 136. One or more coroners to be appointed for every city or town.

**Health officers.**—§ 137. Police trustees, and corporations of every incorporated village, township, town and city, to be health officers, under the provisions of the 5 W. IV. c. 10, or any future act; and such corporations may, by a by-law, delegate such powers to committees of their own members, or others.

**Markets.**—§ 138. Markets and market places, and all market reservations or appropriations to be vested in the municipal corporations under this act.

**Industrial Farms, Cemeteries, &c.**—§ 139. Corporations authorized to purchase property for industrial farms; § 140, and offenders may be committed to hard labor at such farms. § 141. May purchase property for cemeteries. § 142. Powder magazines.

**Auditors.**—§ 143. Two auditors to be appointed by every corporation under certain restrictions as to ineligibility, who shall take the following oath of office:—

I, A. B., having been appointed to the office of auditor for the municipal corporation of —, do hereby promise and swear that I will faithfully perform the duties of such office according to the best of my judgment and ability: and I do swear and declare that I had not, directly or indirectly, any share or interest whatever in any contract or employment with, by or on behalf of such municipal corporation during the year preceding my appointment, and that I have not any contract or employment for the present year. So help me God.

§ 144. Auditors to examine all accounts against, or concerning corporations; and publish details; and file duplicate with the clerk of the corporation.

*Ferries.*—§ 145. Governor in council to regulate ferries not affected by this act.

*Contested Elections.*—§ 146. A writ of summons, in the nature of a *quo warranto*, may be issued at the instance of any voter or candidate, to try the validity of such election, or the election of any other candidate thereat, upon an order of the Court of Queen's Bench or Common Pleas in term time, or upon the *fiat* of a judge in vacation, on such relator showing reasonable grounds upon affidavit, entering into recognizance in £50, with two sufficient sureties in £25 each, conditional to prosecute with effect, or to pay defendant's costs, such writ to be returnable upon the *eighth* day after service before a Judge at Chambers, who shall have power, upon proof of service of summons, to proceed in a summary way, upon statement and answer, and without formal pleadings to hear and determine the validity of either election, and to cause the person returned upon any invalid election to be removed, and the person lawfully elected, and who ought to have been returned, to be admitted in his place; and in case of neither of such alleged elections being adjudged valid, then, by a like writ, to cause the person returned upon such invalid election to be removed and a new election to be held to supply the vacancy thus created; and it shall and may be lawful for such judge to award costs for or against the relator or defendant upon such writ, or for, or against the returning officer when he shall be a party to such proceedings, as to such judge shall seem just: Provided, *firstly*, that all elections of mayors, wardens, town-reeves and deputy town-reeves, shall be deemed elections within the meaning of this section; *secondly*, that whenever the grounds of objection against any such election shall apply equally to all or any number of the members of any such municipal corporation, it shall be lawful for the relator to proceed by one writ of summons against all such members, &c.; *thirdly*, that all such original writs of summons shall be applied for within *six weeks* after the election complained against, or

within *one month* shall have right that no costs shall be paid by whom any summons shall be served upon the post office, Osgoode Hall or to the effect

*Disclaimer.* of a *quo warranto* right to the office township of — hereby disclaimer may have to the Unless it shall court or judge to being put which latter court or judge such last may claimer to the who shall for bers of such shall be law mons is retu for the said of such corp and return, i and entitled

*Mandamus.* ment given, and proceed judgment shall of execution § 148. Upon vice of sum dwelling ho person there In case of tw the same sh The judge brought befo testimony b trial to infe § 151. No r

within *one month* after the person whose election is questioned shall have accepted the office, and not afterwards; *fourthly*, that no costs shall be awarded against any person against whom any such writ of summons in the nature of a *quo warranto* shall be brought, who shall, within *one week* after having been served with such writ, transmit (*post paid*) through the post office, directed to the Clerk of Judges' Chambers, at Osgoode Hall, Toronto, a *disclaimer* of the office in the terms or to the effect following, that is to say:—

*Disclaimer*.—I, A. B., upon whom a writ of summons, in the nature of a *quo warranto*, has been served for the purpose of contesting my right to the office of township councillor (*or as the case may be*) for the township of — in the county of — (*or as the case may be*), do hereby disclaim the said office, and decline all defence of any right I may have to the same.

Unless it shall have been proved to the satisfaction of such court or judge, that such person had been a consenting party to being put in nomination as candidate for such election, in which latter case such costs shall be in the discretion of such court or judge. *Fifthly*. That it shall be the duty of every such last mentioned person to deliver a duplicate of such disclaimer to the clerk of the municipal corporation in question, who shall forthwith communicate the same to the other members of such corporation. *Sixthly*. That in any such case it shall be lawful for the judge before whom such writ of summons is returnable; to afford a reasonable time and opportunity for the said municipal corporation, or to any municipal voter of such corporation, to intervene and defend the said election and return, in which case such intervening party shall be liable and entitled to costs as any other party to such proceeding.

*Mandamus*.—§ 147. On the first day in term after such judgment given, the judge shall deliver such writ and judgment and proceedings into court, there to remain of record, and such judgment shall be enforced by *mandamus*, and by such writs of execution for costs awarded as occasion shall require.

§ 148. Upon proof that any party is avoiding personal service of summons, the judge may order service of a copy at the dwelling house of such party, on the wife or other grown-up person there, or otherwise as the judge shall direct. § 149. In case of two or more writs to try the validity of any election, the same shall all be returnable before the same judge. § 150. The judge may cause collectors' rolls, poll books, &c., to be brought before him by *certiorari*, and may try the facts by *oral* testimony before him at *nisi prius*, or by issues upon a writ of trial to inferior court of civil jurisdiction, at his discretion.

§ 151. No mandamus or writ of execution to issue until four

days in term after delivery of the judgment. § 152. Such judgment may be examined in term within four days after delivery.

**Rules, &c.** § 153. [Judges of superior courts of common law at Toronto, to settle forms of writs] and regulate proceedings on controverted elections.

**Returning Officers.**—§ 154. In case of the absence of the proper party to hold election under this act, the persons present may appoint a returning officer, after the lapse of one hour from the time appointed.

**By-laws.**—§ 155. Parties interested entitled to certified copies of by-laws on payment of fees; and upon production of any such copy verified by affidavit [either of her Majesty's superior courts of common law at Toronto], may quash such original by-law, if illegal, and award costs to either party; and no action shall be sustainable for anything done under such by-law, unless quashed one calendar month before bringing such action: amends may be tendered. § 156. By-laws of existing corporations to remain in force until repealed.

**Conservators of the Peace.**—§ 157. Returning officers at elections, under this act, to be conservators of the peace *pro tem.*; and may [as well as any justice for such county, town or city where election holden] arrest and try summarily, imprison, or bind over to keep the peace or for trial, or punish by fine or imprisonment, or both, any riotous or disorderly person who shall assault, beat, molest or threaten, any voter or elector coming to or going from such election; and may appoint and swear in special constables. § 158. Special constables refusing to be sworn to be liable to £5 penalty.

**Elections.**—§ 159. To commence at 11 o'clock A. M., and be held until 4 P. M., and may be adjourned until 10 o'clock A. M. next day, and continue till 4 in the afternoon of such second day; unless the returning officer shall see that all the electors intending to vote have had a fair opportunity of being polled, and *one full hour at one time* shall have elapsed and no qualified elector shall during that time give or tender his vote, free access being allowed, in which case he may close the election at 4 o'clock P. M. the first day, or at any time before that hour on the second day.

**Poll Book.**—§ 160. To be kept in the prescribed form by the returning officer, who shall declare the candidates elected, and shall have a *casting vote* in case of ties; otherwise, not to vote. § 161. Poll book to be returned verified to the clerk of the township, &c.

**New Election.**—§ 162. In case of refusal to take office, a new election shall be held by warrant under the hand and seal

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of the head of the corporation [for the preceding year, or in case of his absence, or vacancy, then the clerk, or in case of vacancy, any one member of the corporation for the preceding year] within eight days after the receipt of such warrant.

**Vacancies.**—§ 163. [By death, judicial decision or otherwise] to be filled up by a new election under warrant from the head of such corporation [or in case of absence or vacancy, then the clerk, and in case of vacancy, then any one member].

§ 164. Four days' notice of such special elections to be given by the returning officer. § 165. In case of no election in any township, &c., on the day appointed, or if a requisite number [of candidates shall not have been elected], the corporation may supply such deficiency by the appointment of a sufficient number of the qualified freeholders and householders who shall be bound to accept office under the same penalty as if elected.

§ 166. Vacancies in the offices of warden, mayor or town reeve, by reason of death or removal, to be supplied by the municipal corporation choosing others amongst their own number qualified to act.

**Term of office, &c.**—§ 167. Municipal officers to remain in office until successors are elected or appointed.

**Despatch of business.**—§ 168. A majority of the whole to form a *quorum* for the despatch of business; and in case of absence of the proper officer, those present to appoint a chairman: president to have a casting vote at all meetings.

**Corporate Officers.**—§ 169. Municipal corporations to appoint their clerks and their salaries. § 170. Clerk to keep records of their proceedings, and keep the same open for public inspection without fee or reward. § 171. Corporations for counties, towns, townships and villages, to appoint a treasurer, and cities to appoint a chamberlain, to be paid by salary or percentage, as they shall appoint: such officers to give security for performance of their duties. § 172. Treasurers and chamberlains to receive and keep public monies and pay out by lawful order, and perform [all such duties as may be assigned to him by any such by-law: *Provided*—*Firstly*. It shall be the duty of every township, village and town treasurer, to receive from the collector all monies collected on account of county rates, and pay the same over to the county treasurer, within the time prescribed by any by-law. *Secondly*. That the municipality of such township, village or town, shall be responsible to the county council for all such county rates paid to such township, village or town treasurer, who shall, with his sureties, be responsible to such municipal corporation for the same, as for monies received by him on account of the township, village, or town rates respectively. *Thirdly*. That

such township, village or town treasurer shall keep an account with the county treasurer, and give receipts for monies received by him on account of the county, and receive from the county treasurer receipts for monies paid by him on account of county rates. *Fourthly.* Collector not to be exonerated from his responsibility to the county council for any county rates, whenever they shall proceed against him instead of such local municipality. *Fifthly.* Local treasurer entitled to  $2\frac{1}{2}$  per cent. upon county rates received and paid over by him, and no more.] § 173. Clerks, treasurers and chamberlains to hold office until removed.

*Books and Papers.*—§ 174. Books and papers of treasurers to be chattels of the corporations; and monies and securities received to be deemed property of the corporation; and in case of embezzlement parties liable to indictment accordingly.

*Former Debts and Liabilities.*—§ 175. Corporations elected under this act to be substituted for corporations previously existing; and suits commenced by former corporations to be continued by the new corporations; and all estates and property, real and personal, and all debts and liabilities, to be vested in, due and owing by, such new corporations.

*Payment of Debts.*—§ 176. Corporations to take charge of debts due by localities under their jurisdiction, and provide for their payment under any existing act respecting the same. § 177. Debts incurred by any county, town, &c., to be paid by assessment on ratable property. By-laws, authorising any debt, not to be valid, unless sufficient provision be made for payment of such debt, and interest, within twenty years. § 178. Such by-laws not repealable. Officers refusing to carry such by-laws into effect guilty of misdemeanor, punishable by fine or imprisonment.

*Executions.*—§ 179. In case of execution against any corporation, copy to be delivered to the chamberlain or treasurer; and if not paid within one calendar month, the sheriff to strike a rate of sufficient amount to cover such execution, and levy the same by precept to the collectors.

*Annual Accounts.*—§ 180. Annual accounts of corporations to be submitted to the Governor General on or before the 31st July in each year.

*Finances.*—§ 181. Upon petition of one-third of the members, the Governor may issue a commission to enquire into the financial affairs of such corporation. § 182. Debts contracted previous to the 1st January 1849, may be provided for by by-law approved by the Governor in council; and upon such approval, the other provisions of this act not to be applicable until after default of payment under such by-law. Corporation

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notes or debentures may be gradually liquidated by substituting other promissory notes or debentures till all are paid. § 183. Municipal corporations not to act as bankers or issue notes as a circulating medium, nor any bond or debenture for less than £25. Any such issues to be void—bonds and notes, &c., in last preceding clause, excepted. § 184. Any person making or issuing any such bonds or notes, &c., contrary to the last clause, or tendering the same in payment, to be guilty of *misdemeanor* under the 7 W. IV. c. 13.

*Prosecutions under By-laws.*—Offences against by-laws, not otherwise provided for, may be prosecuted in a summary way before any one or more justices within the locality, on the oath of any competent witness (other than the informer), who shall have power to award and enforce the penalty, or imprisonment; one moiety of the penalty to go to the informer, the other to the use of the corporation: except in case of prosecution by the corporation; in such case, the whole penalty shall go to the corporation. § 186. Officers of corporations to be competent witnesses.

*Road Allowances.*—§ 187. The municipality of any township or county may not pass any by-law for stopping up any original road allowance [nor on the limits of any village or town or city therein, or on the borders thereof: Provided—*Firstly*. That the municipality of any township within which any police village, or any other village or hamlet of not less than twenty dwelling houses, standing within an area of not more than 200 acres, shall be situated, may, upon the petition of the trustees of such village (if a police village), and in other cases upon the petition of *fifteen* of the inhabitant householders of such village or hamlet, accompanied by a certificate of the registrar of the county that a plan of such village or hamlet has been duly deposited in his office according to law, by any by-law of such municipality, stop up, sell and convey, or otherwise deal with any original road allowance within the limits of such village or hamlet, as laid down on such plan, in the same manner as the municipality of any incorporated village is empowered to stop up, sell, convey, or deal with any such original allowance within the limits of such incorporated village—but subject to the provisions of § 188 of this act. *Secondly*. That a village or hamlet situate partly within one township and partly within another, shall be within the meaning of this section; and in such case the municipality of each such township shall have the powers hereby conferred, as far as respects any original allowance within such village or hamlet, which, according to the said plan, shall be situate within such townships respectively.] § 188. Upon the altera-

tion of any other road, the site of the old road may be sold by the corporation to the party or parties next whose land it runs, or to any other person or persons, but not until the first mentioned parties have refused to purchase. Any person in possession of any concession road or side line, having laid out streets in any city, &c., without any compensation therefor, shall be entitled to retain such concession road in lieu of such streets. § 189. No road hereafter to be more than 90 feet nor less than 40 feet wide. § 190. All powers, &c., vested in magistrates in quarter sessions, with respect to any particular highway, road or bridge, shall henceforth be vested in the municipal corporations.

*Road Contracts.* § 191. Corporations may by law contract with any person for planking, &c., any road, or building any bridge; and grant such persons the tolls in payment for not more than ten years, the parties keeping the same in repair.

*Altering Roads.*—§ 192. No by-law to be made for [the opening, stopping or altering], widening or diverting any public highway, &c., until one calendar month's previous notice, and hearing parties against the same. This section not to extend to any provincial public work; § 193, nor to any roads, &c., under the ordinance department; § 194, nor to allow roads being run through ordinance property except by consent. § 195. In case it shall be necessary for roads to pass over private property, arbitrators to be appointed to fix compensation (if any); awards to be subject to the Court of Queen's Bench. § 196. In case of special actions, tender of amends may be pleaded. § 197. Damages apportioned to the benefit derived by the plaintiff from opening the road, &c.

*Public Documents, Meetings, &c.*—§ 198. By-laws, bonds, &c., to be authenticated by corporate seal, &c. § 199. Original by-laws to be kept in the clerk's office and open to inspection. Copies to be furnished at 6d. per folio, and all corporate meetings to be public except when the public interest shall require the contrary.

*Gaols, &c.*—§ 200. Corporations of cities or towns using gaols, &c., of the county, to pay to such county a fair compensation therefor, to be settled by arbitrators in case of disagreement, with the usual provisions.

*Boundaries.*—§ 201. Villages, towns, &c., to have the several boundaries set forth in the schedules to the act. § 202. Special provision made as to towns named in schedule D. § 203, 204, 205, relate to the incorporation of the same, and division thereof into wards. § 206. District corporations to continue until the fourth Monday in January 1851. § 207. Proclamation of any incorporated village, &c., under this act, to take

effect after the end of three calendar months from the *teste* of such proclamation.

**Property Qualification.**—§ 208. Property qualification to vote or be elected under this act not to take effect until some new assessment law shall be passed, but to remain as before this act: [Provided—*Firstly*. That the value of the property by the provisions of this section required as the qualification of a township councillor shall be £100, instead of £300, as heretofore required for district councillors. *Secondly*. That in the case of all township councillors, it shall be a sufficient qualification, if in lieu of such £100 of real property, they shall be seised or possessed of real and personal property, together amounting to £200. *Thirdly*. That in the case of all such towns and villages as are lastly above mentioned, any person to be elected a councillor for the same shall be seised and possessed to his own use in fee of lands and tenements within the county, &c., in which such town or village shall be situate, or within some one or other of the counties, or unions of counties next adjoining, of the real value of £100 over and above all charges and incumbrances. *Fourthly*. That in the cities and towns, existing provisions for registering votes shall continue until repealed by by-law. *Fifthly*. That whether any new assessment law shall or shall not be passed prior to this act coming into force, the persons described in this section as entitled to elect and be elected, until such new law be passed, shall be those entitled to elect and be elected. *Sixthly*. Any town whose act of incorporation had been disallowed or expired before the 1st January 1850, shall be held to be an incorporated town within this section.] § 209. Acts inconsistent herewith repealed. § 210. Interpretation clause. § 211. Power to amend or repeal this session.

## SCHEDULE A.—Villages.

1. Chippawa. 2. Galt. 3. Oshawa. 4. Paris. 5. Richmond (County of Carleton). 6. Thorold.

## SCHEDULE B.—Towns.

1. Belleville. 2. Brantford. 3. Brockville. 4. Bytown. 5. Co. bourg. 6. Cornwall. 7. Dundas. 8. Goderich. 9. London. 10. Niagara. 11. Peterborough. 12. Picton. 13. Port Hope. 14. Prescott. 15. St. Catharines. [With their limits and wards specially described.]

## SCHEDULE C.—Cities.

1. Hamilton. 2. Kingston. 3. Toronto. [With their limits and wards specially described.]

## 490 **Murder.—Mute.—N. Y. Currency.**

### SCHEDULE D.

[Omitted in the original act, but inserted in the amended act, 13 & 14 V. c. 64.]

*Towns with municipalities only, or without any municipal organization.*

*First Division.*—1. Amherstburgh. 2. Chatham. 3. Guelph. 4. Perth. 5. Simcoe. 6. Woodstock.  
*Second Division.*—1. Barrie. 2. L'Orignal. 3. Queenston. 4. Sandwich.

### MURDER.

By 4 & 5 V. c. 27, § 3, every person convicted of murder, or of being accessory before the fact to murder, shall suffer death as a felon: and every accessory after the fact to murder, shall be liable, at the discretion of the court, to be imprisoned at hard labour in the Provincial Penitentiary for life, or for any term not less than seven years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years.

§ 4. Sentence of death may be pronounced after conviction for murder in the same manner, and the court before which the conviction may be had shall have the same power in all respects as after conviction for other capital offences.

§ 5. Every person convicted of murder shall, after judgment, be confined in some safe place within the prison, apart from all other prisoners, and shall be fed with bread and water only, and with no other food or liquor, except in case of receiving the sacrament, or in case of any sickness or wound, in which case the surgeon of the prison may order other necessaries to be administered; and no person but the gaoler and his servants, and the chaplain and surgeon of the prison shall have access to any such convict without the permission in writing of the court or judge before whom such convict shall have been tried, or of the sheriff or his deputy.

§ 6. Persons charged with murder or manslaughter may be tried in the district, county, or place in which the party slain shall die, or in which the assault was inflicted.

See also titles "Homicide," "Punishment."

### MUTE.

By 4 & 5 V. c. 25, § 15, if any person being arraigned upon any indictment for treason or felony shall stand mute of malice, or will not answer directly to the indictment, it shall be lawful for the court, if it shall so think fit, to order the proper officer to enter a plea of "not guilty," on behalf of such person, which shall have the same effect as if such person had pleaded the same.

### NEW-YORK CURRENCY.

\*By 2 G. 4, c. 13, it is enacted, that from the 1st of July, 1822, no interest or costs shall be recovered on any sums ex-

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pressed in New-York currency, nor any books of account given in evidence, unless expressed in the provincial currency.

### NUISANCE.

Nuisances are of two kinds—*public* and *private*. A public, or common nuisance, is an offence against the public, either by doing a thing which leads to the annoyance of all the Queen's subjects, or by neglecting to do a thing which the common good requires—1 *Haw. c. 75, § 1*; and is an indictable offence.

A private nuisance, is any thing done to the hurt or annoyance of the lands, tenements or hereditaments of another, as by building a house so near to a neighbour's as to stop his lights, or shoot the rain-water upon his house.—3 *Bl. Com.* 216. This is not an indictable offence, but only the subject of a civil action, in which the party may recover damages for the injury.

At the same time, if a private individual sustain a special grievance, arising out of the common injury, he has a right of action for the particular damage occasioned to him, notwithstanding the nuisance may affect all the Queen's subjects.—3 *Bl. Com.* 219.

#### *What is a Public Nuisance.*

The offending qualities of a nuisance are, in general, smell, noise, danger or obstruction; and the existence of it as a *public* nuisance, depends on the number of persons annoyed by it.—1 *Burr.* 337. All trades and manufactures which are set up in a town, and occasion inconvenience to the whole neighbourhood or which are carried on so near a *public highway* as to cause the same inconvenience or danger to persons lawfully passing along it, may be indicted as public nuisances. But where a person sets up a noxious trade remote from human habitations and public roads, and new houses are afterwards built, and new roads constructed near it, the party, in such case, is not guilty of nuisance; for the public cannot, by their own act of coming to settle in the neighbourhood, make that a nuisance which was not so before, on the principle of "*volenti non fit injuria*."—*R. v. Cross*, 2 *C. & P.* 483. Yet, if the trade afterwards become more noxious, he may be indicted for the additional nuisance.—*R. v. Watts, M. & S.* 281. To constitute a nuisance proceeding from a noxious trade, it is not necessary, as Lord Mansfield has observed, that the smell should be *unwholesome*; it was enough if it rendered the enjoyment of life and property *uncomfortable*.—*R. v. White*, 1 *Burr.* 333. To make *candles* in a town, by boiling *stinking stuff* which annoys the whole neighborhood with stenches, is also a common nuisance.—*Matthews v. Carey*, 3 *Mod.* 137; 1 *Haw. c. 75, §*





*inoculating* children with the small-pox, and while they were sick of it, unlawfully and injuriously causing them to be carried along the public street, it was objected that the defendant in this case was, by profession, a person qualified to inoculate with this disease, and that the causing the children to be carried along the street was no more than his directing his patients to attend him for advice, instead of visiting them, or prescribing what he might deem essential to their recovery—air and exercise; it was held that though *inoculation* may be practised lawfully and innocently, yet it must be done under such safeguards as not to endanger the public health; and that the defendant, in this case, was clearly guilty of an indictable offence.—*R. v. Burnett*, 4 M. & S. 272. It is also a public nuisance for any common dealer in provisions to sell *unwholesome* food, or to mix noxious ingredients in anything made and supplied for the food of man. With respect to nuisances by the obstruction in highways and rivers, see *ante* title "Highways," p. 348.

*Of the Remedy, by Abatement and Indictment.*

Any one may pull down, or otherwise destroy, a common nuisance; as, a new gate or fence erected across a highway. 1 *Haw. c. 75*, § 12. But, if there is no pressing necessity for the exercise of this immediate remedy in abating the nuisance, the better way, in order to prevent a breach of the peace, is to proceed against the party, by indictment or presentment. No length of time will legalize a public nuisance.—7 *East*. 199. The punishment imposed by the law upon a person convicted of a nuisance, is *fine* and *imprisonment*; but as the removal of the nuisance is of course the object of the indictment, the court will adapt the judgment to the circumstances of the case. If the nuisance, therefore, be continued, the judgment of the court may be, that the defendant shall remove it at his own costs—1 *Haw. c. 75*, § 14; or the court may suspend their judgment, upon the defendant entering into recognizance to appear at an adjourned or subsequent sessions, when, if it shall appear to the court satisfactory that the nuisance has been abated, the court may impose a nominal fine only; but if the contrary should appear to be the case, the court may then pronounce its judgment, of fine and imprisonment, or either, according to the circumstances of the case.

By 5 W. & M. c. 11, § 3, if an indictment for a nuisance be removed into the King's Bench, and the defendant be convicted, the court may give reasonable costs to the prosecutor.

*Indictment for carrying on an offensive Trade.* (Archbold.)

County of —, } The jurors for our lady the Queen, upon their oath  
to wit. } present that J. S., late of the township of — in

the county of —, laborer, on the — day of — in the — year of the reign of our sovereign lady Victoria, with force and arms, at the township aforesaid, in the county aforesaid, near unto divers public streets, being the Queen's common highway, and also near unto the dwelling-houses of divers liege subjects of our said lady the Queen, there situate and being, unlawfully and injuriously did (make, erect and set up, and did cause and procure to be made, erected and set up, a certain furnace and boiler, for the purpose of boiling tripe and other entrails and offals of beasts; and that the said J. S. on the day and year aforesaid, and on divers other days and times, (') between that day and the day of the taking of this inquisition, at the township aforesaid, in the county aforesaid, unlawfully and injuriously did boil, and cause and procure to be boiled in the said boiler, divers large quantities of tripe, and other entrails and offals of beasts), by reason of which said premises, divers noisome, offensive, and unwholesome smokes, smells and stenches, during the time aforesaid, were from thence emitted and issued, so that the air then and there was, and yet is, greatly filled and impregnated with the said smokes, smells, and stenches, and was and is rendered and become, and was and is corrupted, offensive, uncomfortable and unwholesome, to the great damage and common nuisance of all the liege subjects of our said lady the Queen there inhabiting, being and residing, and going, returning, and passing through the said streets and highways, and against the peace of our lady the Queen, her crown and dignity.

*Second Count, for continuing the Nuisance.*

And the jurors aforesaid upon their oath aforesaid, do further present, that the said J. S. on the said — day of — in the year aforesaid, and from that day until the day of the taking of this inquisition, with force and arms, at the township aforesaid, in the county aforesaid, (a certain other furnace and boiler, for the purpose of boiling tripe and other entrails, and offals of beasts, before that time made, erected, and set up, by certain persons, to the jurors aforesaid unknown, unlawfully and injuriously did continue, and yet doth continue; and that the said J. S. on the said — day of — in the year last aforesaid, and on divers other days and times) &c. as in the first count from thence (') to the end.

**OATH.**

An oath taken on the Common Prayer Book, containing the Epistles and Gospels, is good.—2 *Keb.* 314.

The stat. 15 G. III. c. 39, gives authority to justices to administer oaths where penalties are to be levied, or distresses made in pursuance of acts of parliament.

A Jew should be sworn on the Old Testament.—2 *Keb.* 314; and they are allowed to put on their hats when sworn.—2 *Str.* 821. A Mahomedan on the Koran.—2 *Str.* 1104; and a Gentoo, according to the custom of his religion.—1 *Atk.* 21. It is immaterial what the particular opinions of persons are, pro-

fessing Christianity it is only necessary to the existence of the punishments:—a God, or a false God, to take an oath.—

\*By 3 W. IV. c. 81, taking certain cases therein receive the sacraments, or for offices, or for shall not be appointed, to any or other officer, admitted as a subscriber, or following:—

I, A. B., do swear to bear true allegiance to our sovereign for the lawful sovereign of this province, and of this province, and that I will defend the same against her (or his) most endeavor to (or his) heirs or successors, attempts which I do and all this I do in secret reservation any person or power.

§ 3. Which taken within the and penalties provided. § 4. No ment according shall the omission disability.

If a public officer by common law being considered conduct, and liable to it.—*R.v. Wyatt* bridge, 1 *Haw.*

lessing Christianity, as far as regards the taking of an oath; it is only necessary that they believe the sanction of an oath, the existence of a Deity, and a future state of rewards and punishments.—*Peake, R. 11.* But a person having no idea of a God, or a future state of retribution, cannot be admitted to take an oath.—*Leach, 482.*

**OATHS OF OFFICE.**

\*By 3 W. IV. c. 13, an act to dispense with the necessity of taking certain oaths, and making certain declarations in the cases therein mentioned, and to render it unnecessary to receive the sacrament of the Lord's Supper as a qualification for offices, or for other temporal purposes: it is enacted that it shall not be necessary for any person appointed, or to be appointed, to any office in this province, civil or military, mayor or other officer, or member of any corporation, or for any person admitted as a barrister or attorney, to make any declaration or subscription, or to take or subscribe any other oath than the following:—

I, A. B., do sincerely promise and swear that I will be faithful and bear true allegiance to Her Majesty Queen Victoria, (*or the reigning sovereign for the time being, or if a king, "to his Majesty —."*) as lawful sovereign of the United Kingdom of Great Britain and Ireland, and of this province dependent on and belonging to the said kingdom; and that I will defend her (*or him*) to the utmost of my power, against all traitorous conspiracies or attempts whatsoever, which shall be made against her (*or his*) person, crown or dignity; and that I will do my utmost endeavor to disclose and make known to her (*or his*) Majesty, her (*or his*) heirs or successors, all treasons or traitorous conspiracies and attempts which I shall know to be against her (*or him*) or any of them; and all this I do swear without any equivocation, mental evasion, or secret reservation, and renouncing all pardons and dispensations from any person or power whatsoever, to the contrary. So help me God.

§ 3. Which oath, together with the oath of office, shall be taken within the same period, and under the same disabilities and penalties for the omission thereof, as is now by law provided. § 4. No person shall be required to take the sacrament according to the rites of the Church of England, nor shall the omission to do so subject the party to any penalty or disability.

**OFFICER.**

If a *public officer* neglects a duty incumbent on him, either by common law, or by statute, he is indictable for his offence; being considered as amenable to the law for every part of his conduct, and liable to punishment for not faithfully discharging it.—*R. v. Wyatt, 1 Salk. 380; Anon. 6 Mod. 66; R. v. Bambridge, 1 Haw. c. 66, § 1, Note.*



not taken during the sitting of the court, then to bring him before some justice, to be dealt with according to law, which said *capias* shall be made returnable in the Court of King's Bench, on the first day of term next after the sitting of the said court before which such indictment shall have been found; and if the sheriff shall return *non est inventus*, then an *alias* shall issue from the King's Bench, tested the first day of term, if in term time, or on the last day of the preceding term, if in vacation, returnable before the Court of King's Bench on the first day of the next term. § 4. And if to the said writ the sheriff shall return *non est inventus*, then upon motion in court, or before a judge, in vacation, a writ of *exigent* shall issue, tested on the first day of term, or on the last day of the preceding term, if in vacation, directed to the same sheriff, returnable on the first day of the fifth term from that in which the same was awarded, and in the form required, (vide act). § 5. The sheriff shall, at three successive general quarter sessions, before the return of the said writ, in open court, immediately after the commission of the peace shall be read, make proclamation of the persons named in the *exigent*, requiring them to render to the indictment. § 6. And if the persons so demanded do not appear, the sheriff shall endorse upon the said writ of *exigent* the following return:—

*Form of Return.*

By virtue of the within writ, to me directed, at the court of general quarter sessions of the peace, held at — in and for the district of — on — the — day of — in the year within written, the within named A. B. was a first time demanded, and did not appear: and at the court of general quarter sessions of the peace, held at — aforesaid, for the district aforesaid, on — the — day of — in the year aforesaid, (or as it may be) the said A. B. was a second time demanded, and did not appear: and at the court of general quarter sessions of the peace, held at — aforesaid, for the district aforesaid, on — the day of — in the year aforesaid, (or as it may be) the said A. B. was a third time demanded, and did not appear, therefore the said A. B., according to the law of this province, is outlawed.

The answer of —

C. D., Sheriff.

§ 7. In all cases wherein any writ of *exigent* shall be awarded against any person described in the indictment, as being lately conversant in any other district, a writ of proclamation shall be awarded with the same teste and return as the writ of *exigent*, directed to the sheriff of such district, in the form prescribed (vide act), and the sheriff of such district shall, at three successive courts of general quarter sessions, before the return of the said writ, in open court, the first day of the court, make proclamation according to the said writ, and shall return the same in the following form:—

George the Third, &c. &c. &c.

To the sheriff of the ——— district, *greeting.*

Whereas, by a writ, we lately commanded our sheriff of the district of ——— that he should cause A. B. late ——— to be demanded from general quarter sessions to general quarter sessions, until, according to the law of this province, he should be outlawed, if he did not appear, and if he did appear then, that he should take him and cause him to be safely kept, so that he might have his body before us, on the ——— day of ——— term then next, wheresoever we should then be in Upper Canada, to answer to a certain bill of indictment found against him, for ———; therefore we command you, that in pursuance of the act of the parliament of this province, passed in the ——— year of our reign, you cause the said A. B. to be proclaimed upon three several days, according to the form of the said statute, that he render himself to our sheriff of ——— so that he may have his body before us at the time aforesaid, wheresoever we shall then be in Upper Canada, to answer to the said indictment, and have there then this writ.

Witness, the honorable ——— at Toronto, this ——— day of ——— in the ——— year of our reign.

§ 9. After the return of the exigent and proclamation, the person or persons against whom the same shall have issued, shall, in default of appearance, incur the same disabilities, and the like process shall be thereupon had as in cases of outlawry by the criminal law of England as it stood on the 17th day of September 1792. § 11. The continuance of this act limited to two years, and made perpetual by \* 2 V. c. 7.

\* By 3 W. IV. c. 4, any person, accessories as well as principals, indicted for any capital offence, shall be liable to the same punishment, whether convicted by verdict or confession, or shall be outlawed upon indictment.

## OVERSEERS OF HIGHWAYS.

See title "Township Officers."

## PARDON.

A pardon is a work of mercy extended towards a criminal, whereby the Queen, either before his attainder, conviction or sentence, or afterwards, forgives him for the crime which he has committed, and remits any punishment, pain or penalty, which he has thereby incurred.—2 *Inst.* 233.

By 27 H. VIII. c. 24, it is enacted, that the king shall have the whole and sole power and authority thereof, united and knit to the imperial crown of this realm, as of good right and equity it appertaineth. The power of pardoning offences is thus inseparably incident to, and inherent in the crown; and is entrusted to the sovereign, upon a special confidence that he will spare those only whose case (could it have been foreseen

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the law itself would have excepted out of its general rules, which the wisdom of man cannot make so perfect as to suit every particular case.—1 *Shaw*, 284; 2 *Haw. c. 37*, § 8. But besides a special pardon granted by the King's charter, there may be a *general* pardon, or act of grace, passed by the legislature; but in this instance also, proceeding from the king, for the pardon of certain crimes, committed before a certain period named in the act. Such was the act of grace of 20 G. II. c. 52. But these acts of general pardon have now, for a long time, been discontinued; the special pardon, therefore, proceeding from the King's peculiar grace and favor, is that with which we have now alone to deal. The King may pardon all offences against the crown, or the subject, with some few exceptions. These are—First. *The sending any subject of the realm a prisoner into any parts beyond the seas*; which, in order to preserve the liberty of the subject, is, by the *habeas corpus* act, (31 Car. II. c. 2, § 12) made a *præmunire*, and unpardonable, even by the King. And see *ante* title "Kidnapping." Neither can the King pardon a *common nuisance*, while it remains unredressed, or so as to prevent its abatement. Nevertheless, where a man is convicted, and fined for a *nuisance*, the King may, after judgment, remit the fine.—2 *Haw. c. 37*, § 33. Upon the same principle, the King cannot pardon an offence against a *penal statute* after the information brought; for the informer has then acquired a private property in his share of the penalty.—3 *Inst.* 338; 4 *Bl. Com.* 398. There is also another restriction of a peculiar nature, that affects the prerogative of pardoning; and that is in the case of parliamentary impeachments, wherein the King's pardon cannot be *pleaded* to any such impeachment, so as to impede inquiry, and stop the prosecution of great and notorious offenders.—12 & 13 *W. III. c. 2*. This statute, however, does not restrain the King from pardoning the offender after *conviction* on impeachment.—4 *Bl. Com.* 399. A pardon is not effectual unless it is under the great seal; for a warrant under the privy seal, or sign manual, though sufficient to admit the party to bail, is not of itself a complete irrevocable pardon.—1 *Str.* 166. It is also a general rule, that wherever it may be reasonably presumed that the King has been deceived, the pardon is void. Therefore, any suppression of truth, or suggestion of falsehood, in a charter of pardon, will vitiate the whole, for the King was misinformed.—3 *Inst.* 238; 2 *Haw. c. 37*, § 8. And this is in conformity with the statute of 27 Ed. III. c. 2, which directs that in every charter of the pardon of felony, the suggestion, and the name of him that maketh the suggestion, shall be comprised; and if it be found untrue,

the charter shall be disallowed. *General words* have a very imperfect effect in pardons; thus, a pardon of all "*felonies*" will not pardon a *conviction* or attainder of felony; but the conviction or attainder must be particularly mentioned; and if the party is convicted by verdict, the pardon must recite the indictment and conviction.—2 *Haw. c. 37, § 8.*

The statute R. II. st. 2, c. 1, enacts, that no pardon for *treason, murder, or rape*, shall be allowed, unless the offence be particularly specified therein; and particularly in *murder*, that it shall be expressed whether it was committed by lying in wait, assault, or *malice prepense*; upon which Sir Edward Coke observes, that it was not the intention of the parliament that the King should ever pardon murder under these circumstances, and therefore they prudently laid the pardon under this restriction, because they did not conceive it possible that the King would ever excuse an offence by name which was attended with such high aggravations.—3 *Inst. 236.* And it is remarkable enough, says Sir W. Blackstone, that there is no precedent of a pardon in the register, for any other homicide than that which happens *se defendendo, or per infortunium*; to which two species the King's pardon was expressly confined by the statute of 2 Ed. III. c. 2, and 14 Ed. III. c. 15, which declare that no pardon of homicide shall be granted, but only where the King may do it by the *oath of his crown*; that is to say, where a man slayeth another in his own defence, or by misfortune. But the above statute (Ric. II.) enlarges, by implication, the royal power, provided the King is not deceived in the intended object of his mercy; and therefore, pardons of murder were always granted with a *non obstante* of the statute of Richard II. till the time of the revolution, when, the doctrine of *non obstante* ceasing, it was doubted whether murder could be pardoned generally; but it was determined by the Court of King's Bench, that the King may pardon on indictment of murder, as well as a subject might have discharged an appeal for that offence.—*Salk. 409.*

A pardon may also be *conditional*; that is, the King may extend his mercy on what terms he pleases, and consequently, may annex to his pardon any condition that he thinks fit, whether precedent or subsequent, on the performance whereof the validity of the pardon will depend.—2 *Haw. c. 37, § 45.* A general pardon by act of parliament, containing no exceptions, is more beneficial in one respect than by the King's charter, inasmuch as a man is not bound to plead it; but the court must *ex-officio* take notice of it; neither can he lose the benefit of it by his own *laches* or negligence, as he may of the King's pardon.—*Fost. 43, 2 Haw. c. 37, § 61.* But if any persons

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are excepted out of an act of general pardon, no one can then take benefit of it without specially pleading it; and he must shew in his plea that he is not one of the persons excepted.—*Id.* § 60. But the King's pardon must, in all cases, be specially pleaded, and produced in court *under seal*; and this too at a proper time; for if a man is indicted, and has a pardon in his pocket, and he does not plead it when arraigned, but puts himself upon his trial by pleading the general issue, he thereby waives the benefit of the pardon, and cannot afterwards resort to it.—2 *Haw. c.* 37, § 25, 67.

By 5 & 6 W. & M. c. 13, when a pardon is pleaded by any criminal, the judges have a discretionary power to bind him to his good behaviour, with two sureties, for any term not exceeding seven years.

The effect of a free pardon by the King, is to make the offender in all respects a new man; to acquit him of all corporal penalties and forfeitures annexed to that offence for which he obtains his pardon; and not so much to restore his former, as to give him a new credit and capacity. But nothing can restore or purify the blood when once corrupted, which is the consequence of the attainder of *treason* or *murder*, if the pardon be not allowed till after the attainder, but the high and transcendent power of parliament; yet, if a person so attainted receives the King's pardon, and afterwards has a son, that son may be heir to his father; because the father being made a new man may transmit new inheritable blood; though had the son been born before the pardon, he could never have inherited at all, nor can he inherit if he has an elder brother living, born before the attainder; for in that case the land will escheat *pro defectu hæreditis*.—1 *Hale*, 358; 4 *Bl. Com.* 402. By stat. 3 W. IV. c. 5, corruption of blood is taken away, except in cases of high treason; and it shall be lawful for every person or persons, to whom the right or interest to, or in any lands, after the death of any such offender, should or might have appertained, if no such attainder had been, to enter into the same.

By 4 & 5 V. c. 24, § 48, a pardon under the royal sign manual, or by warrant under the hand and seal at arms of any governor, &c., shall have the effect of a free or conditional pardon (as the case may be), under the great seal; but shall not mitigate the punishment for any subsequent offence.

### PARTY PROCESSIONS.

By 7 V. c. 6, reciting that, "whereas divers persons in considerable numbers, distinguished by ribbons, favours and other emblems, expressive of party feelings, are in the practice of

meeting and marching in procession in different parts of this province, upon certain festivals, anniversaries and other occasions, in celebration of certain political events; and whereas such celebrations, under whatever pretence held, are found to give great offence to large portions of her Majesty's faithful subjects, and to occasion heats and perpetuate animosities, injurious to social order and dangerous to the public peace; and it is therefore expedient entirely to prohibit the same": it is enacted by § 1, that any body of persons who shall meet and parade together, or join in procession for any such purpose, and any body of persons who shall march or parade together, or join in procession for the purpose of celebrating or commemorating any festival, anniversary, or political event relating to, or connected with any religious or other distinctions or differences between any classes of her Majesty's subjects, or of demonstrating any such religious or other distinctions or differences, and who shall bear, wear, or have amongst them, any firearms or other offensive weapons, or any banner, emblem, flag or symbol, the display whereof shall be calculated, or shall tend, to provoke animosity between her Majesty's subjects of different religious persuasions, or who shall be accompanied by any music of a like nature or tendency, shall be and be deemed an *unlawful assembly*; and every person present thereat shall be and be deemed to be guilty of a *misdemeanor*, and shall, upon conviction thereof, be liable to be punished by fine and imprisonment, or either, at the discretion of the court. § 2. Any justice of the peace shall and may proceed, with such assistance as may be necessary, to the place where any procession or meeting of persons hereby declared to be unlawful shall be held or take place; and such justices, or one of such justices, or some other person by their or his order, shall then and there read or repeat aloud to the persons so assembled a command or notice to disperse, in the words or to the effect set forth in the schedule to this act annexed marked A: § 3, and the persons so met and assembled together shall thereupon forthwith disperse and depart; and in case of neglect or refusal, may be apprehended by warrant of such justice or justices, and proceeded against in a summary way, and convicted by such justice or justices upon view of the offence, or before any two other justices; and every person so convicted on view, or on the oath of one or more credible witnesses, shall be committed to the common gaol of the district for the term of *one calendar month*, and until the costs of conviction are paid. § 4. Any person convicted, under the last preceding section, and committed to prison in execution thereupon for a longer period than *twenty-four*

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hours, may appeal to the next general quarter sessions, to be holden not less than twelve days after conviction, upon giving notice in writing of such appeal, and the cause and matter thereof, within three days after such conviction, and seven days before the sessions, and remaining in custody, or entering into recognizance, with two sufficient sureties, before a justice of the peace, to appear at the sessions and try such appeal, and abide the judgment of the court, and pay such costs as may be awarded, and in the meantime to keep the peace. § 5. In case of appeal, the court may empanel a jury to try the matter. § 6. This act not to extend to religious processions. § 7. Actions for anything done under this act to be brought within twelve months.

SCHEDULE A.

Our sovereign lady the Queen doth strictly charge and command all manner of persons being here assembled, immediately to disperse themselves and peaceably to depart, upon the pains contained in the act of parliament of (*here insert the year and chapter of this act*), intituled "*An act to restrain party processions in certain cases.*"

PATENT RIGHTS.

\*By 7 Geo. IV. c. 5, when any subject of his Majesty, being an inhabitant of this province, shall allege that he has invented any new and useful art, machine, manufacture or composition of matter not known or used before the application, and shall petition the governor, signifying a desire of obtaining an exclusive property in the same, and praying a patent, it shall be lawful for the governor, &c., to grant letters patent under the great seal of the province, and passed in the usual form, to the said petitioner, his executors, &c., for a term not exceeding fourteen years; and every inventor, before he can receive such patent, shall swear (or being a Quaker, &c., affirm) that he is the true inventor or discoverer of the art, machine, or improvement, for which he solicits a patent (which oath or affirmation may be made before any justice), and shall deliver a written description of his invention or improvement, and of the manner or process of compounding the same, in such full, clear, and exact terms, as to distinguish the same from all other things before known; and to make any person skilled in the art or science of which it is a branch, or with which it is most clearly connected, to make, compound and use the same; and in the case of any machine, he shall fully explain the principle, and the several modes in which he has contemplated the application of that principle or character, by which it may be distinguished from other inventions; and he shall accompany the whole with drawings and written

references, where the nature of the case admits of drawings, or with specimens of the ingredients or of the composition of matters, sufficient in quantity for the purpose of experiment; which description, signed by himself, and attested by *two witnesses*, shall be filed in the office of the secretary of the province, and certified copies thereof shall be competent evidence in all courts where the patent right shall come in question; and the inventor moreover shall deliver a model of the machine by him invented, if the secretary shall deem such model necessary.

For fees payable on obtaining such patent and other collateral matters, see the act.

By 12 V. c. 24, § 1, such patents shall be good and available to the grantee for *fourteen years*. § 2. In actions for damages for the infringement of any patent right, the defendant shall be liable to treble costs. No patent shall be void by reason of previous discovery in a foreign country; and the court may award costs (although the plaintiff may fail in his action) as may appear just and equitable. § 3. The right to a patent shall devolve on the legal representative, in case of the inventor's decease before patent granted. § 4. Interfering applications to be settled by arbitration: a patent taken out by the inventor in a foreign country to be no bar. § 5. Patent assignable at law: § 6, may be issued to the assignee of the inventor; and in all cases hereafter, duplicate drawings are to be furnished (when the case will admit), one to be deposited with the Provincial Secretary, and the other annexed to the patent, with a copy of the specification. § 7. A new patent may be issued in case of error, inadvertency, accident or mistake, or surrender of the former by the patentee. § 8. If, through mistake, &c., the specification be too broad, and prior discovery exist as to part, the patentee may file a disclaimer as to such part, with the Secretary of the Province; and the patent shall remain good as to the residue. § 9. Claims made for additions to existing patents shall be subject to revision as original applications. § 10 contains provision as to patents returned for correction. § 11. Patents may be extended for a further period of seven years, on application to the board, to be composed as the act directs. § 12. Any person having purchased, constructed, invented or discovered, any invention prior to application for the patent, shall have the right to use and vend the same; and no patent shall be invalid unless proof given of the abandonment of such invention to the public, or that such prior use had existed for more than one year. § 13. Provision made for granting patents for works of art. § 14. A solemn declaration may be substituted for the oath required to be taken by

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\* 7 G. IV. c. 5, in matters of patents, to the effect of the requirements of the said oath, except in suits at law; and if the applicant be a non-resident, such declaration shall be made before any British minister, plenipotentiary, consul or agent, or any notary public of the country where the party is resident.

§ 15. Counterfeiting the name of the patentee to be a misdemeanor punishable by fine or imprisonment in the common gaol of the district, or both, at the discretion of the court; fine not to exceed £50, nor imprisonment to exceed three months.

§ 16. The date of the patent shall be stamped on the articles by the patentee or assignee; and in case of neglect, he shall be deemed to have committed a misdemeanor and liable as in § 15.

§ 17. Patents fraudulently or surreptitiously obtained, or issued improvidently, or upon false suggestion, may be repealed by *scire facias*.

§ 18. Patents to extend throughout Canada; but not to extend to inventions of foreign countries, or prevent free importation.

§ 19. Former provisions inconsistent with this act, to be repealed.

§ 21. Interpretation clause.

*Petition for a Patent.*

To his Excellency the Right Hon. James, Earl of Elgin and Kincardine, K. T., &c. &c.

The humble petition of A. B., of — in the county of —, engineer—  
Sheweth:

That your petitioner is a natural born subject of her Majesty, [*or a subject of her Majesty*], and that he has invented a new and useful machine, &c. (*describing the article in general terms*), not known before this application, a specification whereof, accompanied with the necessary drawings and references, and duly attested, has been filed by your petitioner in the office of the secretary of this province, pursuant to the statute in such case made and provided.

Your petitioner therefore humbly prays, that your excellency will be pleased to direct that her Majesty's letters patent may be granted to your petitioner for the said invention, and for the term allowed by law, and your petitioner, as in duty bound, will ever pray, &c.

A. B.

*Form of Declaration.*

I, A. B., of — in the county of —, engineer, do solemnly and sincerely declare, that I verily believe I am the sole and true inventor and discoverer of the machine mentioned, and referred to in the specification and drawings hereunto annexed.

A. B.

Signed and made the — day of — 18—.

Before —, J. P. Co. of —.

*The Specification.*

No general form can be given of this; it will of course depend upon the construction of each particular invention: the

act \*7 Geo. IV. c. 5, however expressly defines what it shall contain, and requires also, that it shall be signed by the petitioner and be attested by *two* witnesses.

PENALTIES.—See *ante* title "*Fines*," p. 297.

### PENITENTIARY.

\*By the 3 Wm. IV. c. 44, the sum of £12,500 was granted by the provincial parliament for the erection of a penitentiary in this province, to be vested in his Majesty.

\*By the 4 Wm. IV. c. 37, it is enacted that the penitentiary shall be under the direction of five inspectors, to be appointed by the lieutenant-governor during pleasure, and that the said board of inspectors shall choose one of their number to be their president, and shall have full power to make all necessary rules and regulations respecting the discipline and police of the said penitentiary. § 2. It shall be the duty of the inspectors to examine into all matters connected with the government, discipline and police of the penitentiary; the punishment and employment of the prisoners therein confined; the financial concerns and contracts for work; and the purchases and sales of the articles provided for such penitentiary, or sold on account thereof; and they may from time to time require reports from the warden or other officers of the penitentiary, in relation to any of the said matters. § 3. Also to inquire into any improper conduct alleged against the officers; and for this purpose they shall be empowered to issue subpoenas to compel the attendance of witnesses, and the production of papers and writings before them. § 4. And any witness forswearing, shall, on conviction, suffer the pains and penalties of perjury. § 5. It shall be the duty of the warden and other officers, to admit the inspectors into every part of said penitentiary, and exhibit all books and papers, &c. § 6. The board shall keep minutes of its proceedings, signed by the members, and shall meet once in two months at the penitentiary, and then inspect the same, and shall annually, on or before the 1st of November, make a report to the legislature, of the state and condition thereof; of the prisoners confined therein; of monies expended and received; and generally, of all proceedings during the past year: *Provided always*, that no inspector shall be warden, or be concerned in the business of such warden, or hold any appointment connected with the penitentiary. § 7. The officers of the penitentiary shall be as follows: First—One warden or principal superintendent, who shall reside at or near the penitentiary. Second—One clerk. Third—One chaplain. Fourth—One physician and surgeon. Fifth—One de-

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puty warden, who shall also reside at or near the penitentiary. Sixth—And not exceeding twenty keepers: such clerk and keepers to be appointed by the board of inspectors, and to hold office during pleasure; and the warden, chaplain, physician, and deputy warden, to be appointed by the lieutenant-governor, to hold their office during pleasure. § 8. The lieutenant-governor is authorised to procure a guard, who shall, while on duty, be subject to the orders of the warden or his deputy. § 9. The warden, before entering on the duties of his office, shall give a bond to his Majesty, with sufficient sureties, to be approved by the inspectors, in the penal sum of £2000, for the faithful performance of his duties, according to the form annexed, which shall be filed with the secretary of the province; and the warden, clerk, deputy warden, and keepers, shall, before they enter upon their respective offices, severally take and subscribe before the chairman of the quarter sessions of the Midland district, the following oath, to be filed with the clerk of the peace:

“I, A. B., do promise and swear, that I will faithfully, diligently and justly serve and perform the office and duties of —, of the provincial penitentiary of Upper Canada, according to the best of my abilities. So help me God.”

§ 10. It shall be the duty of the warden or his deputy to attend constantly at the penitentiary, except when performing some other necessary duty; to exercise a general supervision over the government, discipline and police, of the said penitentiary; to give the necessary directions to the keeper, and to examine daily into the state of the penitentiary, and the health, conduct and safe-keeping of the prisoners; to use every proper means to furnish such prisoners with employment, the most beneficial to the public, and the best suited to their various capacities, and to superintend all the manufacturing and mechanical business carried on within the penitentiary; to receive the articles so manufactured, and to sell and dispose of the same for the benefit of the province, when the labour of the convicts is not let out by contract. § 11. All transactions and dealings on account of the penitentiary shall be in the name of the warden, by his name of office, of “Warden of the Provincial Penitentiary in Upper Canada,” and by that name he shall sue and be sued. § 12. Disputed claims shall be referred to arbitration. § 13. Whenever the inspectors of the penitentiary shall so direct, it shall be the duty of the warden to make contracts from time to time for the labour of the convicts, with such persons, and upon such terms as the warden may deem most beneficial. § 14. The prisoners shall be supplied with provisions by contract, unless the inspectors shall

otherwise direct; such contract to be made annually or semi-annually, under the direction of the inspectors, at a fixed price per day for each prisoner; such contracts being previously advertised for, in two of the district newspapers, and in all other newspapers, and for such time as the inspectors shall direct; and the contractors shall give satisfactory security for the performance of their contracts. § 15. The necessary medicines and hospital stores shall be purchased by the warden from time to time, as may be requisite, with the advice of a physician, and under the direction of the inspectors. § 16. The warden is also authorised to purchase raw materials, taking bills, whenever any supplies or necessities shall be purchased. § 17. No inspector, warden or officer, or person employed at the penitentiary, shall be directly or indirectly interested in any contract, purchase or sale, on account of the penitentiary, under the penalty of £100, to be recovered by action of debt, in any of his Majesty's courts in this province: to be applied, when recovered, to the use of the province. § 18. The warden shall keep a regular and correct account of all monies received and paid, and deliver to the inspectors a monthly return thereof, upon oath, and stating the balance in his hand. § 19. The warden shall close his accounts annually, on or before the first day of October, and render to the governor a full account, to be laid before the legislature; also, an inventory of the goods, raw materials, and other property of the province on hand, exhibiting a complete detail of the transactions of the penitentiary for the year, with an affidavit annexed of the warden and clerk, stating that the same are correct and true in every respect, to the best of their knowledge and belief. § 20. The warden shall, on or before the 15th October in every year, transmit to the inspectors a complete and comprehensive view of the transactions of the penitentiary during the preceding year; of the number of convicts confined therein; the various branches of business in which they are employed; the number employed in each branch; and the profits to the province, if any, arising therefrom. § 21. No perquisites or emoluments shall be taken by the officers of the establishment, except that the warden or deputy shall be provided with dwellings at or near the penitentiary, and shall be furnished with fuel and candles, and servants from among the convicts. § 22. The warden shall make an annual report to the governor, on or before the first day of October, of the convicts discharged in the preceding year, and the particulars. § 23. In case of vacancy, the deputy warden shall fulfil the duties of warden, until such vacancy be filled. § 24. The physician of the penitentiary shall keep a register

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of the sick and deceased convicts, stating their names, ages, and cause of death. § 25. All books and papers relating to the penitentiary, shall there remain. § 26. The salary of the warden shall be £200 per annum, and of the deputy warden £150, and the other officers shall receive such remuneration as the inspectors, with the approbation of the governor, shall deem just. § 27. The convicts, other than such as shall be confined in solitude, shall be kept to hard labour, except in case of sickness, and at night, singly in a cell, and also during the day time, when unemployed. § 28. Their clothing and bedding shall be of coarse materials, manufactured, when it can be done, in the penitentiary; they shall be supplied with a sufficient quantity of inferior and wholesome food, and each of them with a bible, at the expense of the province. § 29. In case of any violent conduct by the convicts, the officers may use all suitable means to defend themselves and prevent escape. § 30. The warden shall take charge of any property which any convict shall have, upon entering the penitentiary, and shall preserve the same for his benefit, and pay the amount thereof to such convict when released, or to his legal representative; and in case of death, if no legal representative shall appear within a year, the property shall be applied to the use of the province. § 31. Upon the discharge of any convict, by pardon or otherwise, the warden shall furnish him with necessary clothing, not exceeding £3, and a sum of money not exceeding £1. § 32. Any person conveying letters to or from any convict without the consent of the warden, shall be guilty of a misdemeanor. § 33. The following persons shall be authorised to visit the penitentiary at pleasure, viz.:—the lieutenant-governor, the members of the legislature, the judges of the King's Bench, and the attorney and solicitor general, but no others, except by permission of the warden, or under such regulations as the inspectors shall provide. § 34. The officer in charge of any convict, shall deliver to the warden a certified copy of the sentence, and shall take a certificate of delivery, and in case of escape, the warden shall take all proper measures for his apprehension, and he may offer a reward, not exceeding £50, for the apprehension and delivery of such convict. § 35. No inquest shall be held on the body of a deceased convict, unless requested by the warden or one of the inspectors; but the warden shall, in all cases of death, from any other cause than ordinary sickness, call the coroner; and upon the death of any convict, unless the body shall be removed by relatives within twenty-four hours for interment, the warden shall deliver the same, on demand, to the agent of the medical society of the district. § 36. In case of any

pestilence or contagious disease breaking out among the convicts or in the vicinity, the inspectors may cause the convicts to be removed to some suitable place of security. § 37. Contains a similar provision in case of fire. § 38. It shall be the duty of the warden to receive and keep any convict until discharged by due course of law, the province supporting such convict, and paying the expenses attendant upon the execution of such sentence, except that the district in which conviction shall take place shall defray the expense of conveying such convict to the penitentiary. § 39. In case any prisoner shall escape, or attempt to escape, he shall be liable to the like punishment as upon a committal under the authority of a court of justice, and the officer shall be liable to the like penalties for any neglect or violation of duty in respect to such prisoner, as if such prisoner had been committed under the like authority. § 40. The warden, and other persons employed in the penitentiary, shall be exempt from serving on juries, or in the militia, or from town or parish offices. § 41. Spirituous or fermented liquors prohibited, without a written permit signed by the physician of the penitentiary. § 42. The salaries of the officers shall be paid by the receiver-general, in discharge of such warrants as may be issued by the governor.

• By the 3 Vic. ch. 59, § 4, the guards of the said penitentiary now appointed, or hereafter to be appointed, shall severally take and subscribe before the president of the board of inspectors, the following oath:

"I, A. B., do promise and swear, that I will faithfully, diligently, and justly serve and perform the office and duties of guard of the Provincial Penitentiary in Upper Canada, according to the best of my abilities. So help me God."

§ 5. The president of the board of inspectors authorised to administer the oaths required to be taken by the warden and other officers of the said penitentiary.

• By the 4 & 5 Vic. ch. 69, § 1, the penitentiary erected near Kingston, shall hereafter be called the "Provincial Penitentiary of Canada," and convicts in Lower Canada may be conveyed to, and imprisoned therein, until discharged in due course of law. § 3 provides that all the enactments contained in the 4 W. IV. ch. 37, with regard to convicts imprisoned therein, shall apply to convicts imprisoned under the authority of this act. § 4. The name of the warden to be "The Warden of the Provincial Penitentiary of Canada," by which name he shall sue and be sued, in all matters concerning the said penitentiary. § 5. So much of the last above recited act as authorises the appointment of a deputy warden is repealed; and the inspectors, or a majority of them, may appoint

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and remove an assistant warden of the said penitentiary, who shall act under the censure and superintendence of the warden, and in case of vacancy, or absence of the warden, shall have all the powers which, by the said act, were in like cases vested in the deputy warden.

### PERJURY.

Perjury, (from the Latin, *perjurium*) is the crime of *wilful false swearing* to any matter of fact *material* to the issue or point in question, when a *lawful* oath is administered to the party in some *judicial* proceeding.—3 *Inst.* 174; 1 *Haw. c.* 69, § 1; 1 *T. R.* 69. And it is an offence at common law.

*Subornation* of perjury, is the offence of procuring another to take such a false oath as constitutes perjury in the principal, and is an offence under various statutes.

It has been settled that *justices of the peace* have no jurisdiction over perjury at *common law*.—2 *Haw. c.* 8, § 38; *Salk.* 406; 2 *Stra.* 1088. But under the statute of *Elizabeth*, they have; this statute, however, only relates to the crime of *subornation*, and from the difficulty attending prosecutions under it, is now seldom resorted to.

#### 1. Of Perjury at Common Law.

The perjury must be wilful, that is, the false oath must be taken deliberately and advisedly; for, if it originated more from the weakness than the perverseness of the party; as, if it be occasioned by surprise or inadvertency, or a mistake of the true meaning of the question; it will not then amount to voluntary and corrupt perjury.—1 *Haw.* 69, § 2. It has been said, that no oath shall amount to perjury, unless the fact deposed to be sworn *absolutely* and *directly*; but this doctrine is now exploded, and the crime of perjury, it is agreed, may be committed by a man who swears that he *believes* that to be true which he *must know* to be false.—*R. v. Pedley*, 1 *Leach*, 337; *Miller's case*, 3 *Wills.* 427; 2 *Bl.* 811. The oath must be *false*; upon which head it has been observed, that it is not material whether the fact which is sworn to be in itself true or false; for however the thing sworn may happen to prove agreeable to truth, yet if it were not *known to be so*, at the time by him who swears to it, his offence is altogether as great as if it had been false. This position cannot be denied, as constituting perjury, viz.—when a witness wilfully swears that he knows a thing to be true, which at the same time he knows nothing of; and thus impudently endeavours to induce those before whom he swears to proceed upon the credit of a deposition which any stranger might make as well as he.—1 *Bl.* 811.

c. 69, § 5 per *Lawrence, J. 6, T. R. 637; R. v. Edwards, 2 Russ. 518. note (e)*. All false oaths taken before those who are in any ways intrusted with the administration of justice, in relation to any matter legally pending before them, are properly perjuries. Therefore all persons are indictable who wilfully forswear themselves in any *judicial proceeding*, depending before a court of law or equity or any other court, whether the proceedings therein be recorded or not; where an affidavit is falsely made of any matters *material* in a cause, the party making it is indictable for perjury, although the affidavit is never used to found any subsequent proceeding upon.—*R. v. White, 1 M. 271; R. v. Hailey Ry. & M. 94; 1 C. & P. 258*; and so in a false oath before a justice of the peace, in any proceeding within the jurisdiction of the justice, in which he is authorised by law to administer an oath.—1 *Haw. c. 69, § 3*, or before a commissioner of the court of K. B., duly authorised; but in all private transactions between man and man, no oath whatsoever, however false it may be, is punishable as perjury in a criminal prosecution; such as, a false oath taken by one upon making a bargain, that the thing sold is his own. Neither is the breach of a *promissory oath* within the legal definition of perjury. Therefore, no public officer who neglects to perform the duties of his office, which he has previously sworn faithfully to discharge (however punishable he may be for a misdemeanor, and aggravated as his offence may be by the violation of his oath) is indictable for perjury.—2 *Haw. c. 69, § 3*. Neither can a juror, who gives a verdict contrary to evidence, be prosecuted for perjury.—1 *Haw. c. 69, § 5*. The oath must be taken before some court or person *legally authorised* to administer an oath; for no other whatsoever, which is taken before persons not legally authorised, or competent to administer an oath, can amount to *perjury* in the eye of the law.—1 *Haw. c. 69, § 4*. The thing sworn must be *material* to the point in question; for if it be wholly foreign from the purpose, or altogether immaterial, not tending to aggravate or extenuate the damages, nor likely to induce the jury to give a readier credit to the substantial part of the evidence, it cannot then amount to perjury; because it is, in such case, merely idle and insignificant; as if, upon a trial, in which the question was, whether A. was *compos* or not, a witness unnecessarily and impertinently describes a journey which he took to see the party, and happens to swear falsely in relation to some of the circumstances of the journey.—1 *Haw. c. 69, § 8*. But if the false oath has any tendency to prove or disprove the matter in issue, however circumstantially; as, if the party wilfully mistakes the colour of a man's coat, or speaks falsely to the

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credit of another witness, it will in like manner amount to perjury—*Rex v. Griebel*, 12 Mod. 142; *R. v. Muscot*, 10 Mod. 195. With respect to *subornation* of perjury, if the person incited to take a false oath do not actually take it, the person by whom he was so incited is not guilty of *subornation of perjury*; but he is, nevertheless, liable to be punished as for a gross misdemeanor, in attempting to pervert the course of justice.—1 Haw. c. 69, § 10.

### 2. Of the offence by Statute.

By 5 Eliz. c. 9 (made perpetual by 29 Eliz. c. 5, § 2, and 21 Jac. 1, c. 28, § 8), it is enacted by § 3, that every person who shall unlawfully and corruptly procure any witness to commit any wilful and corrupt perjury, in any matter or cause depending in suit and variance, shall forfeit £40; or (by § 4) if he has not goods to that amount, shall suffer imprisonment for half a year, and stand upon the pillory for one hour, in some market town next adjoining to the place where the offence was committed. By § 5, no person so convicted can afterwards be received as a witness in any court of record, until the judgment be reversed. By § 6, any person either by subornation, unlawful procurement, sinister persuasion, or by means of any others, or by his own act, consent or agreement, committing wilful and corrupt perjury, shall, upon conviction, forfeit £20, and be imprisoned six months, and his oath not afterwards received in any court, until judgment be reversed; or if the offender has not goods, shall be set in the pillory, and have both his ears nailed, and be discredited and disabled forever to be sworn in any court of record, until judgment shall be reversed. By § 9, the judges of any court where the perjury is committed, and the justices of assize and gaol delivery, and the justices of the peace, at their quarter sessions, may enquire of, hear and determine all offences against the act. And by § 13, the act is not to restrain the authority of any other judge having absolute power to punish perjury before the making of the statute, so that he get not upon the offender less punishment than is contained in the act.

The above statute of Elizabeth did not alter the nature of the offence at *common law*, but merely enlarged the punishment. It is, however, seldom resorted to in the present day, on account of the difficulty of convicting under it; for, in the first place it has been held not to apply to any case unless it can be shewn that there is a *party grieved* by the perjury, and that the perjury was committed in a matter relating to the proof of what was in issue.—*Salk.* 270. Nor can a witness who gives false evidence for the crown be indicted under it; for which a rea-

son is given in the report that does not appear to be a very sound one—namely, because an indictment being *the suit of the king*, he cannot punish his own witness, who swears for him.—*Price's case, Cro. Jac.* 120.

The statute also extends to no other perjury than that of a witness; therefore, perjury committed in an answer to a bill in chancery, or in swearing the peace against another, cannot be prosecuted under the statute.—1 *Haw. c.* 69, § 20.

A false *affidavit* has been also held to be not within the statute. 1 *Roll. 79*; 2 *Roll. ab.* 77; 3 *Keb.* 345; 3 *Salk.* 269. But this appears to be too general a proposition; for if the affidavit be of such a nature that either of the parties in variance be grieved, hindered or molested in respect of their cause, by reason of the perjury, the offence then seems to be within the meaning as well as within the letter of the statute.—1 *Haw. c.* 69, § 21.

### 3. Of other Statutes relating to the offence.

By the 23 G. II. c. 11, which professes to be passed for the laudable purpose of facilitating prosecution for perjury, it is enacted by § 3, that any judge of assize or *nisi prius*, or general gaol delivery, while the court is sitting, or within 24 hours afterwards, may direct any person (examined as a witness upon any trial before him) to be prosecuted for the said offence of perjury, in case there should appear to him reasonable cause for so doing, and to assign the prosecutor counsel, without fee or reward; and such prosecution shall not be subjected to any fee of court, &c.

By 7 & 8 W. III. c. 34; 8 G. I. c. 46; and 23 G. II. c. 6, the false *affirmation* or *declaration* of any of the people called Quakers, is declared to incur the penalties of perjury; and so by several provincial statutes.—\*49 G. III. c. 6; \*10 G. IV. c. 1, &c.

By 12 G. I. c. 29, § 4, if any person convicted of perjury, forgery, or common barratry, shall practise as an attorney, solicitor or agent, the judges of the court shall examine the matter in a summary way, in open court, and may sentence the offender to be transported for seven years.

### 4. Of the Indictment.

An indictment for perjury at *common law*, cannot be preferred at the Quarter Sessions; for, by the common law, the sessions have no jurisdiction of perjury; though it seems they have jurisdiction over it under the 5 Elizabeth, c. 9.—2 *Haw. c.* 8 § 38. But as prosecutions under the statute are much more difficult than those at *common law*, and are seldom adopted, even in the courts above, they are of course still less in use at the sessions.

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any glaring offence of perjury is committed, has also the power to punish the offender in a summary way, as for a contempt.

## 5. Of the Punishment.

Perjury is punishable at common law with fine, imprisonment and pillory (a), at the discretion of the court; and by statute 2 G. II. c. 25, § 2 (made perpetual by 9 G. II. c. 18), the judge may order the party to be transported, or to be imprisoned and kept to hard labour in the house of correction, for a term not exceeding seven years. The false affirmation of a Quaker is punishable in the same manner.—22 G. II. c. 46, § 36; and of other sectarians, such as Menonists, Tunkers, &c. by the \*49 G. III. c. 6; \*10 G. IV. c. 1.

Subornation of perjury is punishable by £40 fine, six months' imprisonment, and the pillory.—5 Eliz. c. 9.

## PHYSIC AND SURGERY.

\*By 3 G. IV. c. 3, it is enacted, that the practice of physic, surgery or midwifery, for hire, gain or hope of reward, by any person not duly licensed, or not being actually employed as a physician or surgeon in his Majesty's naval or military service, shall be a *misdemeanor*; and that upon the trial of any person charged with such misdemeanor, the proof of license, or the right to practise, shall lie upon the defendant. But no prosecution shall be commenced after one year from the offence committed; and no person convicted shall be imprisoned for more than six months, or fined above £25.

### *Indictment for practising without being duly qualified.*

County of —, } The jurors for our lady the Queen, upon their oath to wit. } present, that A. A. late of the township of —, in the county of —, gentleman, being a person of a wicked mind and disposition, unlawfully, wickedly, and injuriously minding and intending to impose upon and deceive divers liege subjects of our lady the Queen, under the false colour and pretence that he the said A. A. was well skilled in the art, calling, profession and practice of physic, surgery and midwifery, and that he was of sufficient knowledge and ability to undertake and practise the said profession or calling, and to execute and perform the duties of such art, profession and calling; and also unlawfully, wickedly and injuriously, going about, and canvassing and procuring himself, the said A. A., to be engaged, retained and employed, by divers liege subjects of our said lady the Queen, in attempting to heal them of diverse maladies, sores and diseases, wherewith the said liege subjects were affected, and in the delivery of pregnant women, for large sums of money to be paid to him the said A. A. for such his pretended skill in the said art, practice, profession or calling of a physician, surgeon and midwife,

(a) Pillory abolished by 4 & 5 V. c. 24, § 31.

on the first day of May in the — year of the reign of our sovereign lady Victoria, by the grace of God, of the united kingdom of Great Britain and Ireland, Queen, defender of the faith, with force and arms, at the township of — aforesaid, in the county aforesaid, unlawfully, wickedly and injuriously, did set up and practise the said art, profession and calling of a physician, surgeon and midwife, and from thence hitherto hath practised physic, surgery and midwifery, at the township aforesaid, in the county aforesaid, for gain, hire, and hope of reward, he the said A. A. then and there not being a member of the medical board of that part of this province formerly the province of Upper Canada, and not being licensed by any governor, lieutenant-governor, or person administering the government therein, to practise physic, surgery or midwifery, in the same, and not being actually employed as a physician or surgeon in her Majesty's naval or military service, contrary to the form of the statute in such case made and provided, to the evil example of all others in the like case offending, and against the peace of our said lady the Queen, her crown and dignity. And the jurors aforesaid, upon their oath aforesaid, do further present, that the said A. A. afterwards, to wit, on the first day of July, in the — year of the reign aforesaid, with force and arms, at the township aforesaid, in the county aforesaid, unlawfully, wickedly and injuriously, did set up and practise the art, profession and calling, of a physician and surgeon, and from the said first day of July, in the year aforesaid, to the first day of March, in the — year of the reign aforesaid, did practise physic and surgery, for hire, gain and hope of reward, he the said A. A. then and there not being a member of such medical board as aforesaid, and not being licensed to practise physic or surgery in that part of this province formerly Upper Canada aforesaid, and not being actually employed as a physician or surgeon in her Majesty's military or naval service, contrary to the form of the statute in such case made and provided, to the evil and pernicious example of all others in the like case offending, and against the peace of our said lady the Queen, her crown and dignity.

### PILLORY.

By the 4 & 5 Vic. c. 24, § 31, the punishment of the pillory is abolished.

### PIRACY.

#### *What acts amount to Piracy.*

Where the subjects of the same state commit robbery upon each other upon the high seas, such acts of violence and depredation amount to piracy. And the same, if the subjects of different states, connected by ties of amity and friendship, commit robbery upon one another.—4 Inst. 154. But where states are at open war with each other, the plundering of an enemy is then not an act of piracy, but a mere act of hostility and lawful capture. So, if persons making a capture at sea do so by authority of any foreign prince or state, this also cannot be considered piracy. Thus, even a capture by authority of the ma-

rauding state as piracy.—indeed, no such if they acted by the 11 & 12 commissions enacted that kingdom shall hostility against pretence of an shall be deemed convicted under fer capital punishment. c. 30, enacted during any war any haven, in dictation, against of any common otherwise admitted enemies upon may be tried admiralty, on suffer death.

By § 9 of commander of shall, in any his trust, and feloniously ruin ordinance, amount up voluntarily cage from an confederate w mander, mas with any ship any person shall to hinder him or shall confi revolt in the be a pirate, accordingly.

By 8 Geo. § 7), if any person, shall exchange, or with any su trade with, or



rauding states of Algiers, Tunis or Tripoli, cannot be treated as piracy.—*Grot.* 2, c. 18, § 2; *Sir L. Jenk.* 790. Formerly indeed, no subjects of the British empire were deemed pirates if they acted under the commission of any foreign power; but by the 11 & 12 Wm. III. c. 7, (which was levelled against commissions granted by *James II.* after his abdication), it is enacted that if any natural-born subjects or denizens of this kingdom shall commit any piracy or robbery, or any act of hostility against others of his majesty's subjects or states, on pretence of authority from any person whatsoever, the offenders shall be deemed to be *pirates*, felons and robbers; and being convicted under that act, or the 28 Hen. VIII. c. 15, shall suffer capital punishment. In addition to this statute, the 13 Geo. II. c. 30, enacts that all natural-born subjects or denizens, who during any war shall commit any hostility upon the sea, or in any haven, river, creek or place, where the admiral has jurisdiction, against his majesty's subjects, by virtue or under colour of any commission from any of the king's enemies, or shall be otherwise adherent or giving aid or comfort to his majesty's enemies upon the sea, or where the admiralty has jurisdiction, may be tried as *pirates*, felons and robbers, in the court of admiralty, on shipboard, or on land; and being convicted, shall *suffer death, &c.*, as under the last statute.

By § 9 of the above statute of 11 & 12 Wm. III. c. 7, if any commander or master of any ship, or any seaman or mariner shall, in any place where the admiral has jurisdiction, betray his trust, and turn pirate, enemy or rebel, and piratically and feloniously run away with his or their ship, or any barge, boat, ordnance, ammunition, goods or merchandize; or yield them up voluntarily to any pirate; or shall bring any seducing message from any pirate, enemy or rebel; or consult, combine, or confederate with, or attempt or endeavour to corrupt any commander, master, officer or mariner, to yield up or run away with any ship, goods or merchandize, or to turn pirate; or if any person shall lay violent hands on his commander, whereby to hinder him from fighting in defence of his ship and goods; or shall confine his master; or make, or endeavour to make, a revolt in the ship, he shall be adjudged, deemed, and taken to be a pirate, felon and robber, and being convicted, shall suffer accordingly.

By 3 Geo. I. c. 24, § 1, (made perpetual by 2 Geo. II. c. 28, § 7), if any commander or master of any ship, or any other person, shall anywise trade with any pirate, by truck, barter, exchange, or in any other manner; or shall furnish any pirate with any supplies of any kind; or shall *fit out* any vessel to trade with, or shall supply or correspond with any pirate, every

such offender shall be deemed and adjudged guilty of piracy, and shall suffer death.

#### *Of Accessories.*

Piracy being no felony by the common law, nor made so generally by any statute, the accessories to the offence were only triable by civil law, if their offence was committed on the sea; but if on the land, they were not triable at all till the 11 and 12 Wm. III. c. 7. By § 10 of this statute, it is enacted, that every person who shall knowingly or willingly set forth any pirate, or aid and assist in any piracy, he shall be deemed an accessory. And after any piracy shall be committed, every person who shall receive, entertain or conceal any such pirate, shall likewise be deemed an accessory. And all such accessories shall be tried after the course of the common law, according to the statute 28 Hen. VIII. as principals, and not otherwise, and shall *suffer death* and loss of land, according as such principals. But by 3 Geo. I. c. 24, all persons who by statute 11 & 12 Wm. III. are only deemed accessories, are by this statute declared to be *principals*, and shall and may be dealt with accordingly.

#### *Of the Indictment, Trial and Judgment.*

The indictment must allege the fact to have been committed on the *high seas*, within the jurisdiction of the *admiralty*, and lay it to be done *feloniously* and *piratically*. If it turn out that the goods were taken any where within the body of a county, the admiralty can have no jurisdiction to inquire into the offence. So, on the other hand, if goods were taken at sea and afterwards brought on shore, the offender cannot be indicted as for larceny in that county into which they were carried, because the original felony was no taking whereof the common law takes cognizance.—3 *Inst.* 113; 1 *Haw.* c. 37, § 10.

By 28 Hen. VIII. c. 15, § 1, all treasons, felonies, robberies, murders and confederacies, committed in or upon the sea, or in any haven, river, creek or place, where the admiral has, or pretends to have power, authority or jurisdiction, shall be tried by commissioners of *oyer* and *terminer*, in such shires and places as shall be limited by the king's commission, in the same manner as if such offences had been committed on the land; and by § 3, the offender is excluded from the benefit of clergy. But notwithstanding this statute, the admiralty can claim no jurisdiction where the haven, river or creek, is within the body of a county; for in that case, the offence was always cognizable at common law; and all rivers are within the jurisdiction of the common law, until they flow past the furthest point of land next the sea.

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In order to spare the expense and delay of bringing offenders from remote places to be tried in England, the 11 & 12 Wm. III. c. 7, § 1, provided that the courts of admiralty abroad might be authorised to try piracies, felonies and robberies, upon the sea; but as this act did not include treason, misdemeanors and other offences, the 46 Geo. III. c. 54, enacts that all treasons, piracies, felonies, robberies, murders, conspiracies and other offences, of what nature or kind soever, committed upon the sea, or in any place where the admiral has jurisdiction may be tried (according to the course of the common law of this realm used for offences committed upon the land) in any of his majesty's colonies, under the great seal. And all persons convicted of such offence, shall be liable to the same punishment as persons would be if tried within this realm under the 28 Hen. VIII.

### POLICE VILLAGES.

By the Municipal Act 12 Vic. c. 81, § 42, the municipal council of any county is authorised by by-law, upon the petition of any number of the inhabitants of any unincorporated village or hamlet, situate in such county, or for the municipal councils of any two or more counties, upon any such petitions from the inhabitants of any incorporated village or hamlet, situate partly within one of such counties, and partly within another or others of them, to define the limits within which, in respect to such village or hamlet, there is, in the opinion of such municipal council or councils, a resident population sufficient to make it expedient that the provisions of this act, for the regulation and police of unincorporated villages should be applied to such village or hamlet, and every such by-law shall fix the place in such village or hamlet for holding the first election of police trustees, the person who shall preside thereat, and the hour of meeting. § 43. Until such village be incorporated it shall be lawful for the resident freeholders and householders, on the second Monday in January next after three calendar months from the passing of such by-law, and annually on that day afterwards, to assemble at the time and place appointed, and elect from among themselves *three* police trustees for such village, who, or any two of them, by a memorandum in writing under their hands, to be filed with the township clerk, shall within a reasonable time after such election nominate and appoint one of their number to be the inspecting trustee. § 44. The collector is required to deliver to the person presiding at such meeting a copy of his roll, comprising the names of the resident freeholders and householders of such village, and their assessment on the roll, and to verify

the same by affidavit (or affirmation) endorsed thereon, to be sworn (or affirmed) before any justice of the peace for the county; and the persons whose names are entered on such roll, and are resident in the village at the time of such election shall be entitled to vote thereat. But no person shall be elected a police trustee who has not been entered on the roll for ratable property to the value of £100 in his own right or in right of his wife. § 45. Trustees of the preceding year or any two of them, may appoint a person to preside at the next annual meeting. § 46. In case of his absence (one hour) the majority of the meeting may appoint a person to preside, and the election is to proceed. § 47. In case of vacancy among the police trustees, the remaining trustees may appoint another in his place. § 48. Police trustees neglecting duties of office to forfeit 20s., § 49, to be sued for within ten days afterwards. § 50. All penalties incurred under the regulations of the police by the next succeeding section, to be sued for by the inspecting trustee, or in his absence, or being the party complained against, by some other of such trustees, before any one justice, having jurisdiction within five miles of the village, or else, before any other justice in such village, by information in a summary way, upon the oath of one or more witnesses. Penalties to be levied by distress and sale, and applied to the repairs and improvements of the streets and lanes of such village. § 51. Police trustees to enforce within the limits of such village the following regulations, viz.:

1. *A Ladder* on the roof to every chimney of a house, more than one story in height; and another from the ground to the roof, under the penalty of 5s. for every neglect, and 10s. per week upon the proprietor.

2. *Two buckets* for water in case of fire, to be kept by every householder, under penalty of 5s. for each.

3. *Ovens and Furnaces* of any baker, hatter, brewer, manufacturer of pot and pearl ashes, or any other person, to be connected with a stone or brick chimney, three feet higher than the building, or any building within one chain, under a penalty not exceeding 10s., and 15s. a week during neglect.

4. *Stove-pipes* to have six inches between the pipe and partition or floor, or nearest wood work, and the pipe inserted into a chimney with ten inches between the stove and any wood work or lathed partition, under a penalty of 10s.

5. Entering any mill, barn, outhouse, or stable, with a *lighted candle* or lamp, not well enclosed in a lantern, or with a lighted pipe or cigar, or carrying fire not properly secured into such barn, &c.—penalty 5s. for every offence.

6. *Lighting a fire* in any wooden house or outhouse, except in a brick or stone chimney, or in a stove—penalty 5s. for each offence.

7. *Carrying* except in a subsequent offence.

8. *Putting* first offence—

9. *Gunpowder* under a penal offence.

10. *Selling* every subsequent

11. *Depositing* any wooden vessel, offence, 5s.

12. *Depositing* with wood work

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14. *Erecting*

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7. *Carrying fire* through any street, lane, yard, garden or place, except in a copper, iron or tin vessel—penalty 2s. 6d., and for every subsequent offence, 5s.

8. *Putting hay, straw or fodder* in any dwelling-house, 5s. for the first offence—10s. per week until removed.

9. *Gunpowder* for sale to be kept in boxes of copper, tin or lead, under a penalty of 20s. for first offence, and 40s. for every subsequent offence.

10. *Selling gunpowder* at night—penalty 40s. first offence, 60s. for every subsequent offence.

11. *Depositing ashes or cinders* (pot and pearl ashes excepted), in any wooden vessel, not lined with sheet-iron, tin or copper; for every offence, 5s.

12. *Depositing quick or unslacked lime* in any building, in contact with wood work—for every offence, 5s., and 10s. per diem until removed.

13. *Lighting fires* in any street, lane, or public place—penalty, 5s.

14. *Erecting furnace* for making charcoal of wood—penalty 20s.

15. *Throwing filth, rubbish, or ordure* into any street, lane, or public places—penalty 2s. 6d., and 5s. every week until removed.

### POLICE OFFICE.

By the Municipal Act, 12 V. c. 81, § 69, it is enacted that there shall be in each incorporated town a police-office, at which it shall be the duty of the police magistrate, or the mayor, in case of his absence or sickness, &c., to attend daily, or at such times and for such periods as shall be necessary for the disposal of business (excepting Sunday, Christmas-day, Good Friday, or any day appointed by proclamation for a public fast or thanksgiving), unless in case of urgent necessity; and it shall be lawful for any justice of the peace having jurisdiction within the town, at the request of the mayor, to sit for such mayor at such police-office. § 70. Such police magistrates to be appointed by the Crown during pleasure; and every such police magistrate shall be *ex officio* a justice of the peace for the town, and for the county within or on the borders of which such town shall lie, and shall receive a salary of not less than £100 per annum, payable quarterly, out of the municipal funds of such town. Such police magistrate not to be appointed until the corporation have communicated to the Governor General, through the Provincial Secretary that such officer was required. § 71. Such police magistrate shall have the power of suspending from office any chief constable or constable of the town for any period in his discretion, immediately afterwards reporting the same, with the cause thereof, if he deem such chief constable or constable deserving of dismissal for the cause of such suspension, to the town council, who shall in their discretion dismiss such officer, or

restore him to office after the period of suspension shall have expired; and during the period of suspension such police magistrate may appoint a substitute. § 72. All offences against the by-laws of any town, and all penalties for refusal to accept or be sworn into office in such town, and all other offences over which one or more justices of the peace have jurisdiction within such town, may be prosecuted and sued for, tried and recovered before the police magistrate of such town; or when there shall be none, then before the mayor of such town, either acting alone or assisted by one or more justices of the peace for such town, as the case may require; and such police magistrate shall be *ex officio* a justice of the peace for such town. § 73. Clerks of the town councils to be clerks of the police offices, and receive the same emoluments as appertain to clerks of justices of the peace, unless by act of the town councils another officer be appointed.

#### POSSE COMITATUS.

The *Posse Comitatus*, or power of the county, includes the aid and attendance of every person above fifteen years of age, under the degree of peer, except ecclesiastical persons, and such as labour under any infirmity. It may be raised by the sheriff, or by justices of the peace, where a riot is committed, where a forcible entry is made, or where there is any force or rescue contrary to the commands of the king's writ, or in opposition to the execution of justice. Persons refusing to assist in this service, when legally required, may be fined and imprisoned. The statutes relating to the *posse comitatus* are the 17 R. II, c. 8; 13 Hen. IV. c. 7, and the 2 Hen. V. c. 8; and see 2 *Inst.* 198; 3 *Inst.* 161.

#### POT AND PEARL ASHES.

By 6 Vic. c. 6, all former acts are repealed, and the Board of Trade in Quebec, Montreal, Toronto and Kingston, and the municipal authorities in other places where inspector may be required, may appoint a board of examiners for the examination of applicants for the office of inspector of pot and pearl ashes. The act then contains sundry provisions relative to the inspection and branding of this article, distinguishing the qualities as *first sort*, *second sort*, and *third sort*, together with the words *potash* or *pearl ash*, as the case may be. § 12. Inspector entitled for his services to 5*d.* currency for every *hundred weight* of pot or pearl ashes by him inspected, together with the actual cost of any barrel by him furnished, or for cooperage or repairs, not exceeding 9*d.* per barrel. § 16. Any inspector directly or indirectly concerned in the buying or

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selling of any pot or pearl ashes, or the scrapings or crustings thereof; or permitting any cooper or other person employed by such inspector, to retain or keep any pot or pearl ashes, &c.; or who shall brand any barrel of any description or size not prescribed by the act; or shall date any weigh note or bill differently from the time of inspection; or shall deliver out any such without date; or shall not conform to the provisions of this act, shall incur a penalty not exceeding £100, and be for ever disabled from holding the office of inspector. § 17. Any inspector refusing between sunrise and sunset (not being employed in any inspection) neglecting or delaying, on application to proceed to such examination and inspection for the space of *two hours*, he or his assistant, &c., refusing, neglecting or delaying, shall, for each offence, forfeit £5 to the use of the person so delayed. § 18. Any person counterfeiting brand marks, or who shall empty any barrel branded as aforesaid, in order to put therein other pot or pearl ashes for sale or exportation, without first cutting out the brand mark, or who shall fraudulently pack therein any other substance than the pot or pearl ashes packed in the same by the inspector: or if any person in the employ of the inspector or manufacturer shall hire out or loan the marks of his employer to any person whatsoever, or shall connive at, or be privy to any fraudulent evasion of the provisions of this act, shall, for every such offence, incur a penalty of £50. § 21. All fines, penalties, and forfeitures imposed by this act not exceeding £10, shall be recoverable by an inspector or his assistant, or any other prosecutor, before any *two* justices of the peace of the district, and shall on failure of payment be levied by warrants of distress to be issued by such justices against the goods and chattels of the offender; and when the same shall exceed £10, then in any court of competent jurisdiction: and one moiety of all such fines shall (except as before provided) be immediately paid to the treasurer of the locality to remain at the disposal of the corporation; and the other moiety shall belong to the prosecutor, unless the action be brought by an officer of the corporation, when the whole shall belong to such corporation. § 22. Actions against any person for any thing done in pursuance of this act, to be commenced within *six months* afterwards; and the defendant may plead the general issue, and give this act and any special matter in evidence; and in case of judgment for the defendant, or non suit, the defendant shall have *treble costs*.

POST-OFFICE.

By \*3 W. 4. c. 4, which determines the number of cases in

which capital punishment shall be inflicted, it is enacted, that if any person shall rob any person carrying or conveying, or having charge of his Majesty's mail in any part of this province, of any letter or letters, packet or packets, bag or mail of letters, every such offender being convicted thereof shall suffer death as a felon. § 12. And accessories before the fact, shall also suffer death.

By 13 & 14 Vic. c. 17, intituled "An act to provide for the transfer of the management of the inland posts to the provincial government, and for the regulation of the said department," it is enacted by § 1, that this act shall come into force, at, and from the time the royal assent thereto shall be proclaimed in this province, or at such subsequent time as by order of her Majesty in council shall be fixed. § 2. The inland posts and post communications in this province, so far as consistent with the Imperial acts now in force, shall be exclusively under provincial management and controul; and the revenue arising therefrom shall form part of the provincial revenue. § 3. All post-offices and postal divisions, stations, districts and establishments, and all commissions or appointments of any officers or persons employed shall continue and remain, subject to the provisions hereinafter made, as well as all bonds and contracts by, with, or to any such officers, and contracts for conveyance of the mails, &c. § 4. Except the provincial postmaster-general, no officer appointed or continued under this act, shall receive more than £400 per annum in salary or emoluments, and the provincial postmaster-general's salary shall not exceed £750 per annum. § 5. The provincial postmaster-general to be appointed by letters patent, and other officers by letter from the proper officer, communicating the governor's pleasure; and nothing in this act shall prevent the provincial postmaster-general from sitting and acting as a member of the Legislative Assembly. § 6. All privileges, powers and authority now vested by any provincial act in Her Majesty's deputy postmaster-general, with regard to services to be required from any railroad company, respecting the conveyance of the mail, &c., shall be vested in the provincial postmaster-general. § 7. Mails in future not to be carried across ferries *gratis*, but such service shall be fixed by contract, or arbitration. § 8. Provincial postage on letters and packets (not being newspapers or printed pamphlets, magazines or books, entitled to pass at a lower rate) shall not exceed the rate of 3d. currency per half ounce, for any distance within this province, any fraction of a half ounce being chargeable as a half ounce. No *transit* postage shall be charged on any letter or packet passing through this province to any other colony in British North America,

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unless the sender choose to *pre-pay* it; nor on any letter or packet from any such colony if pre-paid there. *Two-pence* sterling the half ounce shall remain as the rate in operation, as regards letters by *British mails*, to be extended to countries having postal conventions with the United Kingdom, unless Her Majesty's Government in the United Kingdom shall see fit to alter this rate, to be changed to *3d.* currency. The pre-payment of provincial postage shall be optional. No privilege of franking shall be allowed as regards provincial postage. *Provincial stamps* for the pre-payment of postage may be prepared under the order of the governor in council; which stamps shall be evidence of pre-payment. The provincial postage on newspapers, pamphlets and printed books, to remain as it now is, until altered by regulation under this act; and, subject to the foregoing provisions, the governor-in-council shall have full power and authority to make orders and regulations respecting the post office department as defined in the act. § 9. Any person who shall collect, send, convey, or deliver or undertake to convey, or detain any letter within this province, or who shall have in his possession any letter for the purpose of conveying or delivering it, otherwise than in conformity with this act, shall, for each letter, incur a penalty of £5, with the following exceptions:—1. Letters sent by a private friend, in his way, journey or travel, provided such letters be delivered by such friend to the party addressed. 2. Letters sent by a messenger on purpose, concerning the private affairs of the sender or receiver. 3. Commissions or returns thereof; and affidavits, or writs, process, or proceedings, or returns thereof, issuing out of a court of justice. 4. Letters addressed to a place out of the province and sent by *sea*, and by a private vessel. 5. Letters lawfully brought into this province and immediately posted at the nearest post-office. 6. Letters of merchants, owners of vessels of merchandize, or of the cargo or loading therein, sent by such vessel of merchandize, or by any person employed by such owners for the carriage of such letters, according to their respective addresses, and delivered to the person addressed, without pay, hire, reward, advantage or profit, for so doing. 7. Letters concerning goods or merchandize, sent by common carriers, to be delivered with the goods to which such letters relate, without hire, reward, profit or advantage, for receiving or delivering them: *Provided*, That nothing herein contained shall authorise any person to collect any such excepted letters for the purposes aforesaid.

§ 10. Any letters conveyed, received, collected, sent or delivered in contravention of this act, may be seized by any person or any officer of the provincial post-office, or revenue, and

taken to the nearest post-office. § 11. Postage on letters (if not pre-paid) shall be payable by the party to whom addressed; and if refused, or the party addressed cannot be found, then such postage shall be recoverable from the sender. § 12. No postmaster shall be bound to give *change*, but the exact amount of postage on any letter or package shall be tendered or paid in current coin, or provincial postage stamps. § 13. Subject to this act and instructions from the governor, the postmaster-general shall have power to open and close post offices and mail routes, suspend any postmaster or officer, or servant of the department until the governor's pleasure be known, and appoint a person in his stead; to enter into and enforce contracts for conveyance of the mail; and to make rules and orders for the management of the department; and sue for penalties. The like powers to be exercised by his deputies. § 14. Soldiers' and seamen's letters to be subject to certain postage, to be fixed by the governor-in-council. § 15. The postmaster-general not to be liable to any party for the loss of any letter or packet sent by post.

§ 16. *Offences punishable as Felonies.*

1. To steal, embezzle, secrete, or destroy any post letter, shall be felony, punishable in the discretion of the court by imprisonment in the provincial penitentiary, for not less than *three* nor more than *fourteen* years; unless such post letter shall contain any chattel, money or valuable security, in which case the offence shall be punishable by imprisonment in the penitentiary for life.

2. To steal from or out of a post letter any chattel, money or valuable security, shall be felony, punishable by imprisonment in said penitentiary for life.

3. To steal a post letter bag, or a post letter from a post letter bag, or a post letter from any post-office, or from any office of the provincial post-office, or from a mail, or to stop a mail with intent to rob or search the same, shall be felony, punishable by imprisonment in the said penitentiary for life.

4. To open unlawfully any post letter bag, or unlawfully to take any letter out of such bag, shall be felony, punishable by imprisonment in the penitentiary for fourteen years.

5. To receive any post letter, or post letter bag, or any chattel, money or valuable security, the stealing, taking, secreting, or embezzling whereof is hereby made felony, knowing the same to have been feloniously stolen, taken, secreted or embezzled, shall be felony, punishable by imprisonment in the penitentiary for *fourteen* years, and the offender may be indicted and convicted, either as accessory after the fact or for a substantive felony.

6. To forge, counterfeit or imitate any postage stamp, issued or used under the authority of this act, or under the authority of the Imperial Government, or any British North American province, or any foreign

country, or stamp, or to whereby to portion the general, or grant such other thing counterfeit packet, any that such let of postage, or punishable b

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country, or knowingly to use any such forged counterfeited or imitated stamp, or to engrave, cut, sink, or make any plate, die, or other thing, whereby to forge, counterfeit, or imitate such stamp, or any part or portion thereof, except by permission in writing of the postmaster-general, or some officer or person, who, under this act, may lawfully grant such permission; or to have possession of any such plate, die or other thing as aforesaid, without such permission as aforesaid, or to forge, counterfeit or unlawfully imitate, use, or affix to, or upon any letter or packet, any stamp, signature, initials or other mark, or sign, purporting that such letter or packet ought to pass free of postage, or at a lower rate of postage, or that the postage thereon had been pre-paid, shall be felony, punishable by imprisonment in the penitentiary for life.

*Offences punishable as Misdemeanors.*

1. To open unlawfully, or wilfully to keep, secrete, delay or detain, or procure, or suffer to be unlawfully opened, kept, secreted or detained, any post letter bag or any post letter, whether the same come into the possession of the offender by finding or otherwise howsoever, or after payment or tender of the postage thereon (if payable to the party having possession of the same), to neglect or refuse to deliver up any post letter to the person addressed or legally entitled thereto, shall be a misdemeanor.

2. To steal, or for any purpose to embezzle, secrete, destroy, wilfully detain or delay, any printed form or proceeding, newspaper, printed paper or book sent by post, shall be a misdemeanor.

3. To obstruct or wilfully delay the passing or progress of any mail or of any carriage or vessel, horse, animal or carriage employed in conveying any mail on any public highway, river, canal or water communication in this province, shall be a misdemeanor.

4. To cut, tear up, or wilfully to damage or destroy any post letter bags, shall be a misdemeanor.

5. It shall be a misdemeanor for any mail carrier or any person employed to carry any mail, post letter bag or post letters, to be guilty of any act of drunkenness, negligence or misconduct, whereby the safety or punctual delivery of such mail, post letter bag or post letters shall be endangered; or, contrary to this act or any regulation made under it, to collect, receive or deliver any letter or packet, or to neglect to use due care and diligence to convey any mail, post letter bag or post letter, at the rate of speed appointed therefor by the regulations then in force or the contract under which he acts.

6. It shall be a misdemeanor for any toll-gate keeper to refuse or neglect *forthwith upon demand* to allow any mail or any carriage, horse, or animal employed in conveying the same, to pass through such toll-gate, whether on the pretence of the nonpayment of any toll, or any other: *Provided* that nothing herein shall affect the right of any officer or person travelling with any mail to pass *toll free* through any toll-gate; but in any case where such officer or person would now pass toll free, any officer or person travelling with a mail after the passing of this act, shall, in like manner, pass toll free, but not otherwise or else where, unless it be otherwise provided by competent authority:

but in any case he shall not be detained on pretence of demanding such toll, but the same, if due and not paid, shall be recoverable in the usual course of law from the party liable.

7. Any wilful contravention of any regulation lawfully made under this act shall be a misdemeanor, if declared so by such regulation.

8. To solicit or endeavor to procure any person to commit any act hereby made or declared a felony or misdemeanor, shall be a misdemeanor; and every such misdemeanor shall be punishable by fine or imprisonment, or both, in the discretion of the court; and every principal in the second degree, and every accessory before or after the fact to any such felony as aforesaid, shall be guilty of felony and punishable as the principal in the first degree; and every person who shall aid, abet, counsel or procure, the commission of any such misdemeanor as aforesaid, shall be guilty of a misdemeanor, and punishable as a principal offender; and any imprisonment awarded under this act shall be in the penitentiary, if for a term of or exceeding two years: and if the imprisonment awarded be for a less term, it may be with or without hard labor, in the discretion of the court.

§ 17. Offences under this act may be dealt with, indicted, tried and punished, and charged to have been committed in the locality where committed, or where the offender shall be apprehended, or be in custody. § 18. In indictments, the property of such post letter bag, post letter, packet, chattel, money, or valuable security sent by post, shall be laid in the provincial postmaster general. § 19. Certain provisions of the 10th and 11th V. c. 31, extended to officers of the provincial post office. § 20. The provincial postmaster general may compromise and compound any action, suit, or information commenced by his authority, for recovering any penalties under this act, on such terms and conditions as he shall think proper. § 21. All mere pecuniary penalties imposed by this act, shall be recoverable with costs in any court having jurisdiction to the amount, and shall belong to the crown, saving the power of the governor-in-council to allow any part, or the whole, to the informer. But all such penalties shall be sued for within one year after being incurred: and if the penalty do not exceed £10, it may be recovered before any one justice of the peace, in a summary manner, and if not paid may be levied by distress under warrant of such justice; and if exceeding £10, the offender may be indicted for a misdemeanor (instead of being sued for the penalties), and if convicted, punished by fine, or imprisonment, or both, in the discretion of the court. § 22. Penalties may be recovered on the oath of one credible witness. § 23. In any action against any postmaster, &c., a statement of the account of such postmaster, shewing the balance, and certified as correct by the accountant of the post office, shall be evidence, and judgment shall be for double the amount. § 24. Interpretation clause.

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**POUND BREACH.**

Pound Breach is the forcibly breaking the pound, in which cattle or goods have been put after being lawfully distrained, for the purpose of rescuing them. It has been doubted whether this is an indictable offence, when unaccompanied by a breach of the peace.—4 *Leon.* 12; 3 *Burr.* 1791, 1731. But as pound breach is considered a greater offence at common law than even a rescue of the goods distrained, and is no doubt an injury and insult to public justice, it seems to be equally indictable as such at common law.—*Mirror*, c. 2, § 26; 2 *Chit. c.* 4, 204, note (b). It is well observed, however, that the civil remedy given by the statute of 2 W. & M. c. 5 § 4, will, in most cases of a pound breach, or a rescue of goods distrained for rent, be found the most desirable mode of proceeding, where the offenders are responsible persons.—1 *Russ.* 363. For under the provisions of that statute, the party grieved may, in a special action on the case, recover treble damages and costs against the offenders, or against the owner of the goods, if they come to his use.—See *Bradley on Distresses*, 282; 6 *Bac. Ab. Rescue, C.*

The punishment, upon a conviction on indictment for pound breach, is fine or imprisonment, or both.

*Indictment for breaking Pound. (CHITTY.)*

County of —, } The jurors, &c., that on, &c., at &c., one J. C. took  
to wit. } and distrained one mare and two colts, of the cattle  
of one J. S. late of the township aforesaid, in the county aforesaid,  
yeoman, of the price of twenty pounds, in and upon a certain close or  
parcel of land, of him the said J. C., situate and being at &c. aforesaid,  
wrongfully feeding and depasturing upon the grass growing in and upon  
the said close and parcel of land and doing damage to him, the said  
J. C. there, as a distress for the damage then and there done, and doing  
by the said cattle, and the said mare and colts so taken and distrained,  
as aforesaid, he, the said J. C., on the same day and year aforesaid, at  
&c. aforesaid, in the common pound of the said township of — in the  
county aforesaid, impounded and kept, and detained the same in the  
said common pound there, as a distress, for the cause aforesaid: And  
the jurors, &c. do further present, that the said mare and colts, being  
so impounded, and remaining in the said common pound there, as a  
distress, for the cause aforesaid, the said J. S. on &c. aforesaid, with  
force and arms, at &c. aforesaid, the said common pound, broke and  
entered, and the said mare and colts from and out of the same, without  
the license, and against the will of the said J. C., and without any satis-  
faction having been made to the said J. C. for the damage done by the  
said mare and colts, as aforesaid, unlawfully did rescue, take, lead, and  
drive away, in contempt of our lady the Queen and her laws, to the  
evil and pernicious example of all others in the like case offending,  
and against the peace of our said lady the Queen, her crown and dignity.

**POUND KEEPERS.**

By 12 Vic. c. 81, § 31, the municipal corporation of each township is empowered to make by-laws for (amongst other things) the appointment, under the corporate seal, of a sufficient number of pound-keepers and other officers, with power to displace them and appoint others, and add to or diminish the number of them, as the corporation shall see fit; also, for regulating and prescribing their duties, and the penalties to be incurred on their making default; and for settling the remuneration to township officers; and for inflicting reasonable penalties for refusing to serve office.

*Poundkeepers' duties by Statute.*

It is enacted by 1 Vic. c. 21 (the whole of which is repealed by 12 Vic. c. 80, excepting sections 32, 33, 34 and 35, which are expressly saved from the operation of this act, by schedule B.), § 32, that pound-keepers appointed under this act are to provide themselves with sufficient yards or enclosures for the safe keeping of animals impounded; and pound-keepers are required to impound all animals unlawfully running at large, trespassing and doing damage, that may be delivered to them by any person resident within their division, and shall furnish the same with necessary food and drink; and if after 48 hours such animals shall not be claimed and redeemed by the owner paying the pound-keeper his lawful demand and charges, and the amount of damages awarded as hereinafter provided, he shall cause a notice in writing to be affixed in three public places in the township, for at least fifteen days, giving a description of the animals, and stating the time and place of sale; and if the owner does not redeem the same within the time, by paying the pound-keeper's fees, to be regulated from time to time by the town wardens, who shall furnish a copy or schedule to the township clerk for the information of the pound-keepers, and the charges and damages awarded to the person impounding the same, said pound-keepers shall sell the same to the highest bidder, and shall, after deducting his own legal charges, and damages awarded to the impounder, return the overplus to the owner: *Provided*, that if no person claim such animals within three months after public notice and sale as aforesaid, such overplus shall be paid to the township clerk, to be expended in the improvement of the roads and bridges of the township.

§ 33. If any ox, horse or cow, shall be impounded, and not claimed within fifteen days, and the owner not known to the pound-keeper, he shall not sell the same at the time stated in such notice, but shall postpone the sale for forty days, when

the pound-keepers as aforesaid

§ 34. hours stated the owner of pound-keepers damages to any claiming

§ 35. claimed, impounded household and also ground v such free within two mine where the damage with their hours after sing to at shall be l as other fi labour: to run at standing

Notice is of the town request of township o &c., descri and white need be], v said C. D., shall, withi aforesaid p reason of th charges of auction, or town of — pursuant to Witness

the pound-keeper shall sell the same and dispose of the proceeds as before mentioned : *Provided*, that the owner may at any time before such sale redeem the same by paying demands as aforesaid.

§ 34. Person impounding cattle shall within twenty-four hours state in writing to the pound-keeper his demands against the owner for damages ; and if the owner shall tender to the pound-keeper the full sum which shall or may be awarded as damages, with the costs then incurred, he shall not be liable to any costs afterwards, but the same shall be borne by the party claiming excessive damages.

§ 35. In case the owner shall object to the amount of damages claimed, the pound-keeper shall, within forty-eight hours after impounding, notify three disinterested resident freeholders or householders, farmers in the township, to appraise the damages, and also to judge of the sufficiency of the fence enclosing the ground where such animals were found doing damage ; and such freeholders or householders, or any two of them, shall, within twenty-four hours after notice, view such fence and determine whether the same is a lawful fence, and if so, appraise the damage done, and deliver their award in writing, signed with their names, to the pound-keeper, within twenty-four hours after being so notified. Any person neglecting or refusing to attend to examine such damage after being notified, shall be liable to a penalty of 5s., to be recovered and applied as other fines imposed by this act for refusing to perform statute labour : *Provided*, that the owner of any animals *not* permitted to run at large shall be liable for any damage done, notwithstanding the fence was not of the height required.

*Notice by the Pound-Keeper.*

Notice is hereby given, that I the undersigned A. B., pound-keeper of the township of —, in the county of —, have this day, at the request of C. D. of —, impounded in the common pound of the said township of —, situate at — in the said township, [one bay horse, &c., *describing also any particular marks he may have*, and one brown and white cow, &c., *describing also the animal more particularly if need be*], which were this day found trespassing upon the lands of the said C. D., in the said township; and unless the owner or owners thereof shall, within fifteen days from the date hereof, redeem the same at the aforesaid pound, by paying the damages sustained by the said C. D., by reason of the said cattle so trespassing on his lands as aforesaid, and the charges of the pound-keeper, I shall proceed to sell the same by public auction, on the — day of — next, in the market place of the town of — (or wherever else it may be expedient to effect such sale), pursuant to the statute in such case made and provided.

Witness my hand, at — in the said county, the — day of — 18—. A. B., Pound-keeper.

## Pound Keepers.

### *Pound-Keeper's Notice to view and appraise damages.*

To A. B., C. D., and E. F., of the township of —, in the county of —, yeomen.

Pursuant to the statute in such case made and provided, I do hereby give you notice, and require you and each and every of you to attend at the premises of G. H., situate and being on lot number —, in the — concession of the township of —, in the said county, on — next, the — day of — instant, at — o'clock in the forenoon, then and there to appraise the damages done to the said premises by reason of the trespassing of certain cattle therein, to wit [*here describe the cattle trespassing*], belonging to J. K., of the aforesaid township, yeoman, and which have been in consequence impounded at the common pound, situate at — in the said township; and also then and there to judge of the sufficiency of the fence enclosing the ground where the said animals were found doing damage, and to determine whether the same be a lawful fence.

Given under my hand, at the township of — aforesaid, the — day of — 18—.

E. H., Pound-keeper of the said township.

### *Form of the Award.*

County of —, } We, the undersigned A. B., C. D., E. F., resident  
to wit, } freeholders of the township of —, in the county  
of —, having viewed the premises of G. H., situate and being on lot  
— in the — concession of the said township, and the fence enclosing the ground where certain cattle of J. K., to wit, [*describing the animals*] were lately found trespassing and are now impounded, and also the damage done thereat by the same, do hereby adjudge the said fence to be a good, lawful, and sufficient fence; and we do hereby appraise the damages done to the said premises by reason of the trespassing of the said cattle, at the sum of — pounds.

Witness our hands, the — day of — 18—.

A. B.  
C. D.  
E. F.

### *Information against a person notified, and not attending.*

*Penalty 5s. 1 V. c. 21, § 35.*

County of —, } The information and complaint of E. H., of the  
to wit, } township of — in the county of —, yeoman, one of the pound-keepers of the said township, taken on oath this day of —, before me, — esq., one of her Majesty's justices of the peace for the said county: the said informant saith that he did on — the — day of — now last past, duly notify A. B. of the said township, yeoman, to attend at the premises of G. H., situate and being [*as in the notice to the end, concluding with the words lawful fence*] by delivering to the said A. B. a true copy of the notice in writing hereunto annexed; and this informant further saith that the said A. B. did not attend at the time and place mentioned in the said notice, but made default, whereby the said A. B. hath forfeited the sum of five

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shillings, pursuant to the statute in such case made and provided; and the said informant prayeth that the said A. B. may be summoned to answer the premises and make his defence thereto.

Sworn before me, &c.

For the form of summons and conviction, see titles "Summons," "Conviction."

### PRÆMUNIRE.

The offence of *præmunire* was so called from the words of the writ issued preparatory to the prosecution thereof, "*præmunire facias A. B. quod tunc sit coram nobis*," &c., the word being a barbarous corruption in the law Latin of the word *præmoneri*. This writ commanded that the defendant should be forewarned to appear to answer the contempt with which he stood charged. It took its origin from the exorbitant power claimed and exercised in England by the Pope, which, even in the former days of bigotry and blind zeal, was too heavy for our ancestors to bear; the words *præmunire facias* being thus used to command a citation of the party, have denominated in common speech, not only the writ, but the offence itself, of maintaining the papal power, by the name of *præmunire*: and this was originally ranked as an offence immediately against the king, because it consisted in introducing a foreign power into the land, and creating an *imperium in imperio*, by paying that obedience to papal process which constitutionally belonged to the king alone.—4 *Bl. Com.* 103.

By statute 16 Rich. II. c. 5, which is usually called the statute of *præmunire*, and is generally referred to by all subsequent statutes—it is enacted, that whosoever procures at Rome, or elsewhere, any translations, processes, excommunications, bulls, instruments or other things, which touch the king, against him, his crown and realm, and all persons aiding therein, shall be put out of the king's protection, their lands and goods be forfeited to the king's use, and they shall be attached by their bodies to answer to the king and his crown; a process of *præmunire facias* shall be made out against them, as in other cases of provisors.

By these, says Sir W. Blackstone, the usurped civil power of the bishop of Rome was pretty well broken down, as his usurped religious power was, in about a century afterwards—the spirit of the nation being so much raised against foreigners, that in the reign of H. V. the alien priories, or abbeys for foreign monks, were suppressed, and their lands given to the crown, and no further attempts were afterwards made in support of these foreign jurisdictions.—4 *Bl. Com.* 112.

After the Reformation, the penalties of *præmunire* were ex-

tended to mere papal abuses. Thus, by 24 H. VIII. c. 12, and 25 H. VIII. c. 19, 21, to appeal to Rome from any of the king's courts; to sue to Rome for any license or dispensation; or to obey any process from thence, are made liable to the pains of *præmunire*.

By 5 Eliz. c. 1, to refuse the oath of supremacy, incurs the pains of *præmunire*; and to defend the pope's jurisdiction in this realm, is also a *præmunire* for the first offence, and high treason for the second.

Thus far the penalties of *præmunire* seem to have kept within the proper bounds of their original institution, namely, the depressing the power of the pope; but being pains of no inconsiderable consequence, it has been thought fit to apply them to other heinous offences, some of which bear more, and some less relation to this original offence, and some no relation at all.—

4 Bl. Com. 116. By 13 Car. II. c. 1, it is also declared a *præmunire* to assert maliciously and advisedly, by speaking or writing, that both or either of the houses of parliament have a legislative authority without the king. By the Habeas Corpus Act 31 Car. II. c. 2, it is made a *præmunire* and incapable of the king's pardon, to send any subject of this realm to parts beyond the seas. By 7 & 8 W. III. c. 24, serjeants, counsellors, proctors, attorneys, and all officers of courts, practising without having taken the oath of allegiance and supremacy, and without having subscribed the declaration against popery, are guilty of a *præmunire*, whether the oaths be tendered or not. But these provisions are now modified by provincial statute.

See *ante* title, "Oaths of Office," p. 495.

By 6 Anne, c. 7, to assert that any person, other than according to the acts of settlement and union, hath any right to the throne of these kingdoms; or that the king and parliament cannot make laws to limit the descent of the crown, is likewise declared a *præmunire*.

Numerous as the statutes are on this subject, prosecutions for this offence have been seldom instituted.

### PREScription.

By 10 & 11 Vic. c. 8, § 1, claims at common law or by prescription, to real estate, of *thirty years'* standing, shall not be defeated by shewing that such title *first* began at any time prior to such thirty years; and *after sixty years*, such title shall be indefeasible. § 2. And so the right to any watercourse shall not be defeated after *twenty years'* possession, by shewing commencement prior thereto; and after *forty years'*, such title shall be indefeasible. § 3. 20 years' uninterrupted use of any *right* to any dwelling-house, workshop, or other building, shall give an absolute right thereto, unless held under some deed or writing

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**PRESENTMENT.**

A presentment *generally* taken is a very comprehensive term, including not only *presentments*, properly so called, but also all inquisitions of office, and indictments by a grand jury. But a presentment, as commonly understood, is the notice taken by a grand jury of any offence from their own knowledge or observation, without any bill of indictment laid before them at the suit of the king; as the presentment of a nuisance, a libel, and the like; upon which the officer of the court must afterwards frame an indictment, before the party presented can be put to answer for it.—2 *Inst.* 739.

See further on this subject, *ante* title "Grand Jury," p. 338.

**PRISON BREAKING.**

Prison breaking is the offence of a party, who is in legal custody upon any charge, effecting his own escape by force. This, by the common law, was anciently accounted *felony*, for whatever cause, criminal or civil, the party was lawfully imprisoned. But by 1 Edw. II. stat. 2, it is declared that none that should from thenceforth break prison should have judgment of life or member for breaking of prison only; except the cause for which he was taken and imprisoned required such a judgment if he had been convicted thereupon, according to the law and custom of the realm; therefore, although to break prison and escape, when lawfully committed for any *treason* or *felony*, still remains felony as at common law, the breaking of prison when lawfully confined upon any inferior charge, is punishable only as a high misdemeanor, by fine and imprisonment.—4 *Bl. Com.* 130.

In whatever place a person is restrained of his liberty under a lawful arrest for a supposed crime, whether it be in the stocks or the street, or in the common gaol, or the house of a constable, or private person, such place is properly a prison within the meaning of the statute.—2 *Inst.* 589; *Haw. c.* 18, § 4.

But if no felony whatever has been committed, and the party is merely in custody on a *mittimus*, without being indicted, then he is not guilty within the statute, by breaking the prison, his imprisonment being, in this instance, unjustifiable.

There must be an actual, and not merely a constructive breaking, to make the offence felony; therefore, if through the negligence of the gaoler, the prison doors are left open, and the party escapes without using any kind of force or violence, he is only guilty of a misdemeanor.—2 *Inst.* 590; 1 *Hale*, 611. The breaking must be by the prisoner himself, or by his procurement; for if other persons, without his privity or consent,

break the prison, and he escape through the breach so made, he cannot be indicted for the breaking, but only for the escape.—2 *Haw. c. 18. § 10.* But no breach of prison will amount to felony, unless the prisoner actually escape.—2 *Haw. c. 18. § 12; 2 Inst. 590; 1 Hale, 611.*

### PRISONER.

If the gaoler keep the prisoner more strictly than he ought of right, whereof the prisoner dieth, this is felony in the gaoler, by the common law; and this is the cause, that if a prisoner die in gaol, the coroner ought to hold an inquest.—3 *Inst. 91.*

Money found upon a prisoner when he is apprehended, will, in general, be directed to be restored to him before trial, if it appear by the depositions that it is in no way material to the charge on which he is tried.—*R. v. Barnett, 3 C. & P. 600.*

By 4 & 5 V. c. 24, § 9, all prisoners tried for felonies shall be admitted after the close of the case for the prosecution to make full answer and defence thereto by counsel, or by attorney, in the courts where attorneys practise as counsel.

§ 11. When the attendance of any person confined in any gaol or prison in this province, or upon the limits thereof, shall be required in any court of assize and *nisi prius*, or oyer and terminer or general gaol delivery, or other court, it shall be lawful for the court before whom such prisoner shall be required to attend, in its discretion, to make order upon the sheriff, gaoler, or other person having the custody of such prisoner, to deliver such prisoner to the person named in such order to receive him, which person shall thereupon instantly convey such prisoner to the place where the court issuing such order shall be sitting, there to receive and obey such further order as to the said court shall seem meet: *Provided always*, that no prisoner confined for any debt or damages in any civil suit shall be thereby removed out of the district where he shall be confined.

§ 12. All persons held to bail, or committed to prison for any offence against the law, shall be entitled to require and have on demand (from the person who shall have the lawful custody thereof and who is hereby required to deliver the same), copies of the examinations of the witnesses, respectively, upon whose depositions they have been so held to bail, or committed to prison, on payment of a reasonable sum for the same, not exceeding three pence for each folio of one hundred words: *Provided always*, that if such demand shall not be made before the day appointed for the commencement of the assize or sessions at which the trial is to take place, such person shall not be entitled to have any copy of such examination of witnesses,

unless the jury be of opinion that delay or loss, be committed at such trial, account of such being been preserved. § 13. All copies of their trial, for copies thereof returned into

All persons guilty in law expected to take combatants to sureties to keep they refuse to comply with a

An executor into his hands debts, receive due to the testator owing by the testator sell or give away and in general estate, to all persons. *Went. Off. Ex.* The executor death, enter in moving; and take at least the key of the door being open the day only may take on *Wills, 260.*

*Of the* An administrator are granted to the executor c. 11, 21 H. VII. or the executor shall be granted security for true

unless the judge, or other person to preside at such trial, shall be of opinion that such copy may be made and delivered without delay or inconvenience to such trial; but it shall, nevertheless, be competent for such judge or other person so to preside at such trial, if he shall think fit, to postpone such trial on account of such copy of the examination of witnesses not having been previously had by the party charged.

§ 18. All persons under trial shall be entitled, at the time of their trial, to inspect without fee or reward, all depositions (or copies thereof) which have been taken against them, and returned into the court before which such trial shall be had.

### PRIZE FIGHTING.

All persons present at, and countenancing a prize fight, are guilty in law of a misdemeanor. And when such a fight is expected to take place, a magistrate ought to cause the intended combatants to be brought before him, and compel them to find sureties to keep the peace till the assizes or sessions: and if they refuse to do so, he should then commit them till they comply with such requisition.—*R. v. Billingham, 2 C. & P. 234.*

### PROBATE.

#### *Of the office and duty of Executors.*

An executor, before the will be proved, may seize and take into his hands any of the goods of the testator. He may pay debts, receive debts, make acquittances and releases of debts due to the testator, and take releases and acquittances of debts owing by the testator. Also, an executor may, before probate, sell or give away any of the goods or chattels of the testator: and in general, an executor is a complete executor before probate, to all purposes but bringing of actions.—1 *Salk.* 301; *Went. Off. Ex.* 34, 35; *Lovell on Wills*, 258, 259.

The executor may, in convenient time after the testator's death, enter into the house descended to the heir, for the removing and taking away of goods, so as the door be open, or at least the key be in the door: but he cannot justify the breaking open the door of any chamber to take goods there; but only may take those in the rooms which be open.—*Lovell on Wills*, 260.

#### *Of the office and duties of an Administrator.*

An administrator cannot act before letters of administration are granted to him.—*Lovell on Wills.* By stat. 31 Edw. III. c. 11, 21 H. VIII. c. 5, § 3, in case any person shall die intestate, or the executors refuse to prove the testament, administration shall be granted to the widow or next of kin, or to both, taking oaths for true administration.

By 22 & 28 Car. II. c. 10, made perpetual by 1 Jac. 2, c. 17, it is enacted, that the surplusage of an intestate's estate shall be distributed:—one-third to the wife of the intestate, the residue amongst his children and such as legally represent them, if any be dead, other than such children (not heirs at law), who shall have any estate by settlement of the intestate in his lifetime, equal to the other shares. Children, other than heirs at law, advanced by settlements, or portions not equal to other shares, shall have so much of the surplusage as shall make the estate of all to be equal. But the heir at law shall have an equal part in the distribution with the other children, without any consideration of the value of the land which he hath by descent or otherwise from the intestate.—§ 4.

If there be no children, nor legal representatives of them, one moiety shall be allotted to the wife, the residue equally to the next of kindred to the intestate, in equal degree, and those who represent them. § 5.

No representation shall be admitted among collaterals, after brothers' and sisters' children; and if there be no wife, all shall be distributed among the children; and if no child, to the next of kin to the intestate in equal degree, and their representatives. § 6.

No such distribution shall be made till one year after the intestate's death, and every one to whom any share shall be allotted, shall give bond with sureties in the said courts, that if debts afterwards appear, he shall refund his ratable part thereof, and of the administrator's charges. § 7.

A brother or sister of the half blood shall have an equal share with those of the whole blood.—*Com. Dig. Adm. (H.)*

If none of the kindred will take out administration, a creditor may, by custom, do it.—*Lovell on Wills*, p. 7.

#### *Of the Will.*

No witnesses are absolutely necessary to render valid a will of merely personal property: but with respect to a will of real or landed property, until lately, three witnesses were necessary; and now by the \*4 W. IV. c. 1, § 51, two witnesses are sufficient.

#### *Probate of the Will, how granted, &c.*

\*By statute 33 G. III. c. 8, a court is constituted and established for the granting of probates of wills, and committing letters of administration of the goods of persons dying intestate, to be called the Court of Probate of the province of Upper Canada; the governor to preside therein and pronounce judgment in all suits that may be brought before him, with power to call in an assessor or assessors to act with him, and from

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time to time to appoint an official principal, registrar, and other necessary officers. By § 2, the governor is authorised to institute, by commission, under the great seal, in every district, a court for granting probates of wills and letters of administration of persons having personal estate within such district, to be called the Surrogate Court of the Eastern district; the Surrogate Court of the Midland district; the Surrogate Court of the Western district; and also to appoint from time to time, a surrogate to preside as judge in each of the said courts, and a registrar, and such other officers as may be necessary; and each of the said courts shall have full power to issue process and hold cognizance of all matters relative to the granting of probates of wills and letters of administration, and to grant the same within their respective districts, except as hereinafter mentioned. § 3. In cases where the deceased shall have goods, chattels or credits, to the amount of £5, in any other district than the one in which he died; or when any person shall die, possessed of goods to the value of £5, in two or more districts, the probate or letters of administration shall be granted by the Court of Probate only. By § 6, every will duly proved shall be kept among the records of said court; and a transcript thereof duly authenticated under seal of the court, shall be taken and received as the regular probate of such will, in all her Majesty's courts within this province. By § 7, no nuncupative will shall be good where the estate thereby bequeathed shall exceed £30, that is not proved by three witnesses, at the least, present at the making thereof; nor unless the testator bid the persons present bear witness; nor unless made at the last sickness of the deceased, and in his dwelling-house, or where he had been resident ten days before making such will, except when such person was taken sick being from home, and died before he returned. § 8. After six months from the speaking of such testamentary words, no nuncupative will shall be good, except the substance thereof were committed to writing within six days after the making of such will. § 9. No probate shall be granted till fourteen days after the death of the testator; nor shall any nuncupative will be at any time received, unless the widow or next of kin have been cited; § 10, nor until due proof be made before the said judge or surrogate, that such person is dead, and died intestate. § 15. In cases where administration shall be granted with the will annexed, such letters shall express that such will shall be observed and performed, and for such purpose the administrator shall enter into bond with two or more sufficient sureties. § 17. The Court of Probate and Court of Surrogate respectively, shall hold four sittings or terms for hearing and

determining actions, suits and causes, &c. viz.: The first term from the first Monday in *January* to the Saturday following, inclusive; the second term, from the last Monday in *March* to the Saturday following, inclusive; the third term from the first Monday in *June* to the Saturday following, inclusive; and the fourth term, from the last Monday in *September* to the Saturday following, inclusive. § 18. The following fees may be taken:

*Fees to be taken by the Official Principal and Surrogate.*

OFFICIAL PRINCIPAL AND SURROGATE.	REGISTRAR.			
For seal to the probate of a will, to letters of administration with the will annexed, and to letters of administration, where the property devolving is under £300.....	£0	16	0	0 6 8
From £300 to £1,000.....	1	0	0	0 6 8
When above £2,000.....	2	0	0	0 6 8
For seal of the court to any writing or instrument	0	12	4	0 3 4
For receiving caveat.....	0	6	8	0 0 0
For filing the same.....	0	0	0	0 3 4
For receiving inventory.....	0	6	8	0 0 0
For filing the same.....	0	0	0	0 3 4
For citation.....	0	3	4	0 1 0
For collating will.....	0	0	0	0 6 8
For drawing bond and attesting execution.....	0	0	0	0 6 8
For searching register, each year.....	0	0	0	0 1 0
For office copy, each page 18 lines, 6 words in each.....	0	0	0	0 1 0

APPARATOR OR MESSENGER.

For service of citation.....	£0	2	0
For travelling, each mile.....	0	0	4

*Letters of Administration, how granted, &c.*

By same statute, \*33 G. III. c. 8, § 11, when application is made for letters of administration by any person not entitled as next of kin to the intestate, the court, before granting the same, shall issue a citation to the next of kin, summoning him or her to appear and shew cause against the same, and in case the next of kin should happen to be absent from the province, the court may then grant administration *pro tem.* to the next of kin in the province. § 12. The judge or surrogate, upon granting letters of administration, shall take sufficient bonds from the party, with two sureties, in the name of the governor, according to the form prescribed.

*Form of the condition of the Bond.*

"The condition of this obligation is such, that if the within bounden A. B. administrator of all and singular the goods, chattels, and credits of C. D., deceased, do make or cause to be made, a true and perfect

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inventory of all and singular the goods, chattels and credits of the said deceased, which have or shall come into the hands, possession or knowledge of him, the said A. B., or into the hands and possession of any other person or persons for him, and the same so made, do exhibit or cause to be exhibited into the registry of — court, on or before the — day of — next ensuing, and the same goods, chattels and credits, and all other the goods, chattels and credits of the said deceased, at the time of his (or her) death, which at any time after shall come into the hands or possession of the said A. B., or into the hands and possession of any other person or persons for him, do well and truly administer according to law, and further do make or cause to be made, a true and just account of his said administration, at or before the — day of — and all the rest and residue of the said goods, chattels and credits, which shall be found remaining upon the said administrator's account, the same being first examined and allowed by the judge of the court for the time being, shall deliver and pay unto such person or persons respectively, as the said judge by his decree or sentence, conformably to the provisions in a certain act of parliament intituled, "an act for the better settling intestate estates," and passed in the twenty-second and twenty-third years of the reign of Charles II, and also in a certain act passed in the first year of king James II, contained, shall limit and appoint, and if it shall hereafter appear that any last will or testament was made by the deceased, and the executor or executors therein named do exhibit the same unto the said court, making request to have it allowed and approved accordingly, if the said A. B. within bounden, being thereunto required, do render and deliver the said letters of administration (approbation of such testament being first had and made) in the said court, then this obligation to be void and of none effect, or else to remain in full force and virtue."

§ 13. It shall be lawful for the said judge of probate and surrogate courts respectively to call by citation such administrators to account, and to order and make just and equal distribution of what remains clear, after all debts, funeral and just expenses of every sort first allowed, according to the provisions of the said statutes (22, 23, C. II, & 1 J. II.) But no such distribution shall be made until one year after the intestate's death, and every one participating in such distribution shall give bond to refund in case any debt shall afterwards appear.

§ 16. An appeal shall be from the Surrogate Court to the Court of Probate, if made within fifteen days after the judgment appealed from, and security given for prosecuting such appeal.

#### *Of the payment of Debts, &c.*

In payment of debts, the executor or administrator must observe the rules of priority; otherwise on deficiency of assets, if he pays those of lower degree first, he must answer those of a higher out of his own estate.—2 Bl. Com. 511. First: The executor, &c., may pay all funeral charges and the expense

of taking letters of administration.—*Ibid.* *Secondly*: Debts due to the king, on record or specialty. *Thirdly*: Debts of record are to be paid, viz.: judgments, (docketted according to the stat. W. & M. c. 20), and of two judgments, he who first sues execution must be preferred; but before, it is at the election of the executor or administrator to pay which he pleases first.—2 *Bl. Com.* 465, 511; *Treat. of Eq.* 112. *Fourthly*: Debts by specialty or special contract, such as are due by deed or special instrument under seal, covenant, deed of sale, lease reserving rent, or by bond or obligation—2 *Bl. Com.* 465, 511; and rent in arrear is equal to a debt by specialty.—3 *Bl. Com.* 341, 347. *Lastly*: Debts by simple contract, such as notes of hand, and debts of an ordinary description, not under seal, and these the executor is bound to pay as far as he hath assets, and if no suit be commenced against him, he may pay one creditor in equal degree his whole debt, though he has nothing left for the rest.—*Bl. Com.* 512. As to debts of record, the executor is bound to take notice of these at his peril; but as to debts due by bond or other specialties, an executor may pay a debt on simple contract before a specialty, if he hath no notice of such specialty: for otherwise, it might be in the power of the obligee to ruin the executor, by keeping the bond in his pocket, until the executor shall have paid away all the assets in discharging simple contract debts.—2 *New. Abr.* 485. In payment of bonds and other obligations after due notice, it seems that the executor may (in like manner as respecting debts of record), pay which creditors he thinks fit first, although the other creditors are without remedy if there be no assets; unless the day of payment in one obligation is expired, and the day of payment in the other is yet to come, in which case, the former is to be first satisfied; or unless there be suit commenced. But an executor may confess judgment on one obligation, and plead that to an action brought on another; and if there be two actions brought on two several obligations, he that obtains judgment first must be first satisfied.—*Lovell on Wills*, 73, 74, 75. An executor or administrator, if a creditor also, may pay himself the whole of his demand, to the exclusion of all other creditors of the same degree; but he cannot retain his own debt in prejudice to those of a higher degree; neither shall one executor be allowed to retain his own debt in prejudice to that of his co-executor, in equal degree; but both shall be discharged in proportion.—3 *Bl. Com.* 18.

#### PROVIDENT SOCIETIES.

By 13 & 14 Vic. c. 32, § 1, it is enacted that it shall be law-

ful for any provision by or otherwise avoidable in and orphan and officers branches the to the object mate and ap taries, or of time to mak lations, prov this province seditious obj society, or in cers thereof, otherwise, a ing to the ru of personal p Canada, not same, wheth other real est of such socie corporate po from their off trustee or me piate, embe other person whole or any such society, due demand behalf of the misdemeano the court, to for any term other prison o two years, o sonment, or or written ru officer, or en of the presid society, and to any portio fore any cou of such socie such societie

ful for any number of persons to unite for the purpose of making provision by means of contributions, subscriptions, donations, or otherwise, against the several contingencies of sickness, unavoidable misfortune, or death, and for relieving the widows and orphan children of deceased members; and the members and officers of such societies may from time to time establish branches thereof, so long as the same be confined exclusively to the objects herein set forth. § 2. Such societies may nominate and appoint proper persons as trustees, treasurers, secretaries, or other officers; and may meet together from time to time to make, alter or rescind, or frame by-laws, rules or regulations, provided the same are not repugnant to the laws of this province, or directed to the furtherance of any political or seditious object. § 3. Such societies may, in the name of such society, or in the name of the presiding or other officer or officers thereof, acquire and take by purchase, donation, devise or otherwise, and hold for the rest of the members, and according to the rules and regulations aforesaid, all and every kind of personal property, and also real property in the province of Canada, not exceeding *five acres*, and to sell and alienate the same, whether acquired before or after the act, and to purchase other real estate, not exceeding the quantity aforesaid: and each of such societies shall have a common seal, and succession and corporate powers; § 4, and may require and take securities from their officers. § 5. And if any officer, secretary, treasurer, trustee or member, shall obtain undue possession of, misappropriate, embezzle or withhold from another member, officers or other persons entitled to demand and receive the same, the whole or any portion of the funds, monies or other property of such society, and shall continue to withhold such property after due demand made by any member or officer duly appointed on behalf of the society, every such offender shall be guilty of a misdemeanor, and upon conviction liable, at the discretion of the court, to imprisonment at hard labour in the penitentiary for any term not exceeding three years, or imprisonment in any other prison or place of confinement for any term not exceeding two years, or to suffer such other punishment by fine or imprisonment, or both, as the court shall award. § 6. The printed or written rules of such societies, and the appointment of any officer, or enrolment of any member, certified under the hand of the presiding officer for the time being, and the seal of such society, and the books, minutes and other documents relative to any portion of the matter in question, shall be evidence before any court of civil or criminal jurisdiction. § 7. Members of such societies not to be liable individually for the debts of such societies. § 8. This act to be a public act.

## PROVINCIAL PARLIAMENT.

By 7 Vic. c. 3, it is provided and enacted, that no provincial parliament summoned or called by the Sovereign shall determine or be dissolved by the demise of the crown, but the same may continue, and may meet, convene and sit, proceed and act, notwithstanding such demise.

## PROVISIONS.

Selling unwholesome provisions is an indictable offence at common law, and so is the forestalling, engrossing or regrating of provisions, whereby the price is enhanced. See further on this subject, title "*Forestalling*," p. 316.

## PUBLIC HEALTH.

By the \*5 Wm. IV. c. 10, intituled "An act to promote the public health, and to guard against infectious diseases in this province," the lieutenant-governor, by and with the advice of the executive council, may appoint three or more persons in each town to act as health officers. § 2. Any two of them may, in the day time, enter upon the premises of persons resident within the limits of the town, &c., and examine the same, and order the proprietor or occupant to cleanse the same, and remove whatsoever shall be found there dangerous to public health; and in case of refusal or neglect, said health officers may, with the assistance of the constables and peace officers, and such other persons as they may think fit, enter on the premises and remove the same. § 3. The lieutenant-governor and executive council, may also make rules and regulations concerning the entry and departure of boats and vessels, at the different ports or other places, and the cargoes and passengers. § 4. Any person disobeying or resisting any lawful order of the health officers, or any two of them, or wilfully violating any rule or regulation, or obstructing the officers in the execution of their duty, on conviction before two justices, where such offender shall reside, shall forfeit and pay not less than 20s., nor more than £20, to be levied by seizure and sale of the offender's goods by warrant of the convicting justices, to be paid to the receiver-general, for the use of the province. § 5. This act to remain in force one year, and to the end of the next session. § 6. In all cases in which diseases of a malignant and fatal character shall be discovered to exist in any dwelling-house, &c., situate in an unhealthy situation, or be in a neglected and filthy state, or inhabited by too many persons, the board of health, or a majority, may, at the expense of the board, compel the inhabitants to remove them from, and place them in sheds or tents, or other good shelter,

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in some more salubrious situation, until the cleansing and purification of such dwelling-house, &c., has been effected. This act to relate to all houses and out-houses situate within one mile of any city, town or village. This statute was made perpetual by the \*2 Vic. c. 21.

By the 12 Vic. c. 8, § 1, this act to be put in force by proclamation in case of any formidable epidemic, &c. § 2. The 1, 2, 6, § of the 5 Wm. IV. c. 10, to be suspended whilst proclamation in force. § 3. After issuing proclamation the governor is authorised to appoint a "central board of health." § 4. Local boards of health, of not less than three persons, to be appointed by the municipal councils, and in case of neglect the governor may appoint such local boards. § 5. Central board may issue regulations for prevention or mitigation of disease, and require the local boards to see to the execution of the same; and may authorise the removal of patients from their dwellings in cases of disease of a malignant and fatal character, and placing them in sheds or tents, or other good shelter, until measures can be taken for cleansing and disinfection of such dwellings. § 6. Members of local boards to be called health officers, and may enter and inspect any suspected dwelling-house, &c.; and in case of the owner or occupier's refusal to obey regulations, such health officers may, with the aid of the civil power, enter upon such premises and enforce regulations. § 7. Expense of central board to be defrayed by the province; and of local boards by their respective localities. § 8. Regulations of central board to be sanctioned by the governor and published in the Gazette. § 9. Local by-laws on the subject of health to be suspended, whilst the regulations under this act remain in force. § 10. Any person offering obstruction to any one acting under the authority of this act, or who shall neglect or refuse to comply with the said regulations, shall be liable to a penalty not exceeding £5 for every offence, to be recovered before any two justices, and levied by distress and sale by the same justices, or any other two justices; and in default of distress the offender to be committed to the common gaol or house of correction, for a period not exceeding fourteen days, unless the amount be sooner paid. § 11. No writ of certiorari to be allowed. § 12. Interpretation clause.

#### PUBLIC LANDS.

By the 4 & 5 V. c. 100, § 1, the \*2 V. c. — is repealed. § 2. Except as hereinafter provided, no free grant of public land shall be made to any person. § 3. All claims shall be determined by the governor in council. § 4. Claims allowed



shall be commuted for by land scrip, to be issued by the commissioner of crown lands, and received as money upon all sales of crown lands not set apart for any specific purpose. § 5. To be issued at the rate of four shillings per acre, in amounts not less than £5 currency, assignable by delivery. § 6 relates to militia scrip for Lower Canada. § 7. Receipts to be taken by the commissioner for scrip issued. § 8. May be received for instalments due upon former sales. § 9. Claims to land assigned shall be exchanged for scrip. § 10. Assignments made by married women conjointly with the husband not to be void. § 11. Unlocated claims to be considered as personal estate. § 12. This act not to alter the law in this respect with regard to lands located. § 13. No new claims to be allowed unless made before the 1st day of January 1843, except the parties claiming be under twenty-one years of age. § 14. The price of public lands to be fixed by the governor in council. § 15. The governor in council to appoint in each district a resident agent for the sale of public lands, at fixed prices. § 16. District agent to keep regular accounts, and make the sales appear in the maps in his office; § 17, but not to purchase any, directly or indirectly, upon pain of forfeiting his office. § 18. Purchase money or scrip to be paid to district agent, who shall transmit to the commissioner of crown lands when the amount in hand shall exceed £50, deducting his per centage, and in default shall be charged 15 per cent. per annum: and upon the receipt of any money or scrip, shall give a receipt, specifying the lot; such receipt to be dated the day of signing, and authorise the purchaser to take immediate possession and to maintain actions against trespassers. Letters patent to be issued as soon as purchase money paid, to be transmitted by the commissioner of crown lands to the district agent, within thirty days. § 20. Commissioner of crown lands and district agents to give security. § 21. District agents to receive such per centage as the governor in council shall appoint. § 22. Commissioner to pay over amount in hand to the receiver general once in three months, retaining £500 for contingent expenses. § 23. Commissioner's accounts to be tendered to the government half yearly, and copies, with list of sales, to be laid before both houses of the legislature within ten days after the commencement of the session. § 24. The commissioner, thirty days before any sale under this act, shall cause printed lists of lands open for sale to be exhibited in the office of crown lands and district offices, specifying the prices and terms of payment; copies to be published in the Gazette and one public newspaper where the lands are situate; such lists to be revised annually. § 25. The Governor may

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authorize sales to any lessee, or occupant, or other interested parties. § 26. Free grants may be made to actual settlers, not exceeding fifty acres; provided they have not before received any grant. § 27. Lands may be appropriated for public purposes, not exceeding ten acres. § 28. Compensation to be made for erroneous grants, if claimed within five years. § 29. The Court of Chancery in Upper Canada and King's Bench in Lower Canada, authorised to repeal patents issued through fraud, or in error, or mistake. § 30. Commissioner of crown lands to keep a book for entry at the option of the parties of any assignment, such assignment being first produced to the commissioner, with an affidavit of the due execution thereof, sworn before any justice of the peace, expressing the time of the execution; and every such assignment so registered shall be valid against any one of a previous date not registered, except in cases of express notice: the death of the subscribing witness to be proved by affidavit. § 31. False swearing to be perjury.

By 12 Vic. c. 31, § 2, the 18 § of the 4 & 5 V. c. 100, is to extend to clergy reserves, crown reserves, school lands, and crown lands of every description. § 3. Location tickets or licenses of occupation given by the commissioner of crown lands or an authorised agent, shall bear date the day of signing, and authorise the nominees to take possession and maintain suits. § 4. All claims for scrip to be established within one year after this act, or be forfeited. § 5. All lands, upon the grant of which fees were payable and now due, or upon which settlement duties remain to be performed, shall be forfeited at the end of *two* years after this act (May 1849), unless fees paid and settlement duties performed (exclusive of 50 acre free grants on the lines of public roads under § 26 of the above act). § 7. Defective patents may be cancelled and correct ones issued upon the report of the commissioner of crown lands. § 9. The crown land commissioner required to prepare lists of public lands sold or leased, and upon which one or more instalments are in arrear, and to direct sales thereof to be made on a specific day, after a notice of not less than thirty days and once in the *Gazette* and a local newspaper. § 10. Such lists to be first submitted to the Governor in council, who shall fix the prices and conditions of sale; and the lots remaining unsold at upset prices to be afterwards sold by local agents. § 11. The original locatee or purchaser may *redeem* at any time before actual sale, by paying one instalment, with interest accrued thereon, and continuing to pay yearly afterwards. § 12. Copies of field notes of original surveys to be deposited in the registry office of every county,

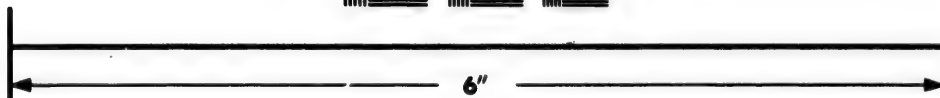
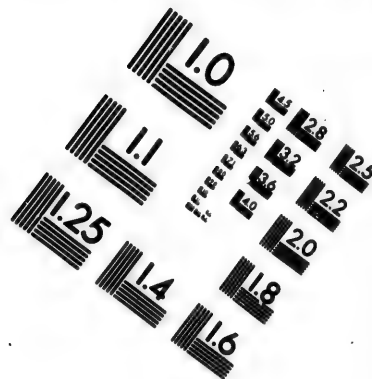
§ 13. A copy certified by the registrar to be *prima facie* evidence.

### PUBLIC MEETINGS.

By 7 Vic. c. 7, reciting, whereas it is the undoubted right of her Majesty's subjects to meet together in a peaceable and orderly manner, not only when required to do so, in compliance with the express direction of law, but at such other times as they may deem it expedient so to meet, for the consideration and discussion of matters of public interest, &c., it is enacted by § 1, That all public meetings of the inhabitants, or of any particular class of the inhabitants of any district, county, riding, city, town, township, ward or parish in this province, required by law, or summoned or called as provided by the fourth section; § 2, and all such public meetings called by the high sheriff, or by the mayor, or other chief municipal officer of any city or town, as provided by the 5 §, upon the requisition of any *twelve* or more of the freeholders, citizens or burgesses of such district, county, riding, town, &c., having a right to vote for members in parliament for such locality; and all such meetings called by any *two* or more justices resident in any such locality, upon a like requisition of *twelve* or more of such freeholders, citizens or burgesses; § 3, and all public meetings declared to be such by any *two* justices, as prescribed by the 6 §, shall be public meetings within the meaning of this act. § 4. In every notice or summons for calling any such public meeting, as in the 1 §, there shall be a notice that such meeting will be within the protection of this act, such notice to be in the form or to the effect set forth in schedule A. § 5. The notice to be issued by the sheriff, mayor or chief municipal officer of any city or town, or by two or more justices, as in the 2 §, shall be issued at least *three* days before such meeting, and shall set forth the names of the requisitionists, or of a competent number of them, &c.; such notice to be in the form or to the effect set forth in schedule B. § 6. Upon information on oath before any justice of the peace, that any public meeting, not being of the description mentioned in the 1 § of this act, or called under the 2 §, is appointed to be held at any place within his jurisdiction, and that there is reason to believe that great numbers of persons will be present at such meeting, it shall be lawful for any two justices of the locality to give notice of such meeting, and to declare the same and all persons attending, within the protection of this act; such notice to be in the form or to the effect set forth in schedule C. § 7. It shall be the duty of every sheriff, mayor, justice or other person, calling any public meeting under the 2 §, to give public notice

thereof, as distributing printed or v. The justice the protection by causing issued by the locality. § 8. ing such me ing within t meeting an until the sa preserving t shall comm notice, or d the chairman person atten a distance a instrument u offender guil viction it sh hand, forthw the district, that such ju *forty-eight* h and gaoler a public meeti constables an ing the peac the written a ing the meet teen and six any justice, *meanor*, and record the r a fine of not by summary be proceeded locality whe may demand meeting, or o pon, such as which any su case of refus and such jus pay a fine of

thereof, as extensively as he reasonably may, by posting and distributing throughout the locality a competent number of printed or written copies of the notice calling the same. § 8. The justices who shall declare any public meeting to be under the protection of this act, as in the 3 §, shall give notice thereof, by causing printed or written copies of the notice or declaration issued by them, to be posted and distributed throughout the locality. § 9. The sheriff, mayor, justice, or other person calling such meeting, or declaring the same to be a public meeting within the act, under the 3 §, is required to attend such meeting and continue thereat, or near the place appointed until the same shall have dispersed, and afford assistance in preserving the peace. § 10. The chairman at such meeting shall commence the proceedings, by causing the summons, or notice, or declaration to be publicly read. § 11 authorises the chairman at such meeting to cause by oral direction, any person attempting to disturb the meeting, to be removed to such a distance as may effectually prevent interruption, and by an instrument under his hand, on his own view, to adjudge any offender guilty of interruption or disturbance, upon which conviction it shall be lawful for any justice, by warrant under his hand, forthwith to commit such person to the common gaol of the district, or to any other place of temporary confinement that such justice may appoint, for any period not exceeding *forty-eight* hours, and until the lawful costs of the constable and gaoler shall be paid. § 12. The chairman at any such public meeting may command the assistance of all justices, constables and other persons, to aid and assist him in preserving the peace. § 13. Special constables to be sworn in upon the written application of the chairman to any justice attending the meeting. § 14. Any person between the age of eighteen and sixty, refusing to be sworn, upon being required by any justice, without lawful excuse, shall be guilty of a *misdemeanor*, and it shall be lawful for such justice thereupon to record the refusal of such person, and to adjudge him to pay a fine of not more than 40s., to be levied as other fines imposed by summary proceedings before justices, or such person may be proceeded against by indictment. § 15. Any justice of the locality where such meeting shall be appointed to be held, may demand, have and take from any person attending such meeting, or on his way to attend the same, any offensive weapon, such as fire-arms, swords, staves, bludgeons or the like, which any such person shall have in his possession; and in case of refusal, the offender shall be guilty of a *misdemeanor*, and such justice may record such refusal, and adjudge him to pay a fine of not more than 40s., to be levied as aforesaid; but



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no such conviction shall interfere with the power of such justice, or any other justice, to disarm such person without his consent, and against his will, by such force as shall be necessary. § 16. Weapons of the value of 5s. or upwards, peaceably and quietly delivered up, shall be returned by such justice to the party on the day next after such meeting, and not before, unless destroyed or lost by unavoidable accident. § 17. Any person convicted of a battery during the day of the meeting, within two miles of the place, shall be punishable by a fine of not more than £25, and imprisonment for not more than three calendar months, or either, in the discretion of the court pronouncing sentence. § 18. Excepting civil authorities, it shall not be lawful for any person to come, during any part of the day of meeting, within two miles of the place armed with any offensive weapon; and any person offending herein shall be guilty of a misdemeanor, punishable by fine not exceeding £25, and imprisonment not exceeding three calendar months, or both, at the discretion of the court. § 19. Any person lying in wait for any person returning from any such public meeting with intent to assault, or by abusive language, opprobrious epithets, or other offensive demeanor, to provoke such person or those who may accompany him to a breach of the peace, shall be guilty of a misdemeanor, punishable by fine, not exceeding £50, and imprisonment not exceeding six calendar months, or both, at the discretion of the court. § 20. Actions for anything done under this act to be brought within twelve months.

For the schedules and forms, see the act.

### PUBLIC OFFICERS.

By 4 & 5 V. c. 91, after reciting that it was highly expedient that provision should be made for preventing any negligence, omission, or irregularity in giving due securities by all persons employed in situations of public trust, and concerned in the distribution or expenditure of public money, who are required to give security for public monies coming to their hands, and for ascertaining the death of any surety or sureties of any such person, it is enacted by § 1, that persons hereafter appointed to offices of public trust shall give security in such sum, and with such sureties as the Governor or principal officers of the department in question shall approve. § 2. Persons now in office also required to give security. § 3. Bonds to be registered with the registrar of the province; § 4, who shall keep separate entries. § 5. Officers neglecting to give such security to forfeit their offices. § 6. In case of the death, bankruptcy, or insolvency, or residence out of the province of any surety, the principal shall give notice to the chief secretary of the province

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or to the principal officer of the department, upon pain of forfeiting one-fourth part of the sum; and neglecting to give other security shall forfeit his appointment. § 7. Where the neglect has not been wilful, the governor may extend the time for giving such new security. § 8. Period limited for registering bonds to be estimated from the time of the execution by the last party. § 9. Irregularity in bonds not to vacate the same. § 10. Bonds to be registered notwithstanding the period elapsed. § 11. Act to apply to existing bonds. § 12. The 16th and 19th clauses of 3 W. IV. c. 9, relating to sheriffs, repealed. § 13. Uniform practice established throughout the province. § 14. Duplicate bonds entered into by officers in Lower Canada to be deposited as soon as certain ordinances take effect. § 15. Statement of bonds to be laid before the legislature within fifteen days after the opening of every session. § 16. This act not to extend to municipal offices. § 17. Interpretation clause.

### PUBLIC WORKS.

The 9th Vic. c. 37, entitled "an act to amend the law constituting the Board of Works," repeals the third and all subsequent sections of 4 & 5 Vic. c. 38, and authorises the Governor to appoint a chief commissioner and assistant commissioner, to be styled "commissioners of public works;" also a secretary, engineer, superintendent and other officers. § 7. The commissioners to have the management and control of, constructing, maintaining and repairing all canals, harbours, roads or parts of roads, bridges, slides and other public works throughout the province, or buildings constructed or maintained at the public expense out of the provincial funds. § 18. The Governor in Council to make regulations for the maintenance and use of such works, and for ascertaining and collecting the tolls, dues and rates thereon, and imposing fines not exceeding in any case \$50 for any one offence; and to provide for the non-passing or detention, at the risk of the owner, of vessels, carriages, animals or goods, on which tolls are to be paid, or regulations complied with, or for injury done to any such public works, or any fine that may have been incurred and remain unpaid; such regulations to be published in the *Official Gazette*. § 19. Officers and soldiers on duty to pass toll-free. § 20. All penalties imposed by this act, or any regulation under the authority thereof, shall be recoverable, with costs, before any justice of the peace for the district in which the offence shall be committed, upon proof by confession, or the oath of any one credible witness; and if not forthwith paid, may be levied by distress and sale of the goods and chattels of the offender, by warrant, under

the hand and seal of such justice; and in default of payment or insufficient distress, such justice may, by warrant under his hand and seal, commit the offender to the common gaol of the district for such term, not exceeding *thirty days*, as he may direct, unless such penalty and costs be sooner paid; and the penalties recovered shall belong to her Majesty, for the public uses of the province, and be paid over and accounted for accordingly: *Provided*, that in respect to tolls on timber passing any slide, and to penalties for violating regulations, or for non-payment of tolls, the same may be enforced by and before any justice of the peace within any district in which such timber may happen to be at the time of application to such justice. § 21. Tolls to be paid over to the Receiver-General, at intervals not exceeding *one month*. § 23. The public works in schedule A. and materials for the same, shall be vested in her Majesty, and be under the control of the commissioners; and other works may from time to time be so declared by proclamation: *Provided*, that if any district council shall pass any by-law, securing, to the satisfaction of the government, the payment of the interest on any sum of money expended on any public road in such district, and for which interest the province is liable, it shall be lawful for the Governor in Council, by proclamation, to transfer such road to the district, which shall be vested in such district from the date of the proclamation; and the council shall have power to make by-laws for the management of such road, imposition and collection of tolls, and imposition and levying of penalties for violation of the by-laws, and the tolls thereof. § 24. The Governor in Council authorised to appoint three arbitrators for each section of the province, to determine the compensation to owners of land assumed for public works; their decision to be subject to the jurisdiction of the superior courts of law or equity. § 25. The Governor authorised to refer any unsettled claim for damages to such arbitrators. § 26. This act not to affect any prior proceedings at law or in equity. § 27. Arbitrators to be sworn in the form prescribed. § 28. To have full power to summon witnesses and swear them; witnesses not attending shall be liable to a penalty of not less than £1, nor more than £5, recoverable before any one justice, and levied by distress and sale of the goods of the offender.

#### SCHEDULE A.

PUBLIC WORKS VESTED IN THE CROWN BY THIS ACT.

#### Navigations, Canals, and Slides.

The Welland Canal, and feeder, together with the portion of the Grand River from Cayuga Bridge to its mouth; the Welland River,

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from Port Robinson to its mouth, and the cut at the Chippawa; all such portions of the Saint Lawrence navigation from Kingston to the port of Montreal, as have been or shall be improved at the expense of the province; the lock and dam at St. Anne's; the Scugog River navigation, and the navigations connected therewith—viz., from the head of the Lake Scugog to Fenelon Falls, and from thence to Mud Lake, and Buckhorn Rapids, by Sturgeon, Pigeon and Buckhorn Lakes (hydraulic privileges being specially reserved to the owners); that portion of the Otonabee River between Peterborough and Rice Lake, with the lock and dam at Whidder's Rapids; the Rice Lake and the River Trent from thence to its mouth, including the locks, dams and slides between those points; all such portions of the Ottawa River, from Bytown upwards, as have been or shall be improved at the expense of the province; the lock and other improvements on the River Richelieu; the Madawaska River, from the head of the Ragged Chute to the Chats Lake.

#### *Harbours, Lake Erie.*

Rondeau Harbour, including the piers, breakwater and inner basin; Port Stanley Harbour and inner basin; Port Burwell, do.; Port Dover, do.; Port Maitland, do.; Port Colborne, do.

#### *Lake Ontario.*

Port Dalhousie Harbour; Burlington Bay Canal; Windsor Harbour.

#### *Roads.*

The main provincial road from Quebec to Sandwich; the main road from Queenston to Hamilton; the Port Hope and Rice Lake road; the Windsor, Scugog and Narrows Bridge road; the Hamilton and Port Dover road; the London and Port Stanley road. Except the Montreal and Quebec Turnpike Trusts, and such portions of the said roads respectively as may lie within the limits of any incorporated city or town, or as shall from time to time be exempted by proclamation, issued by order of the Governor in Council, from the operations of this act, which portions shall, during the period of such exemption, remain subject to the same authorities and provisions of law as if this act had not been passed; the tolls collected under this act upon each road being applicable to the improvement of the road, and the extension of the improved portion thereof; and the debt due by any commissioners, district, or public body, on that portion of any road which shall be under the control of the commissioners of the public works, being thereafter payable out of the provincial funds.

#### *Bridges.*

The Chaudiere bridge, near Quebec; the Cap Rouge bridge; the St. Ann De la Perade bridge; the Batiscan bridge; the St. Maurice bridge; the Union, Suspension, and other bridges over the Ottawa river, between Bytown and Hull; the Trent bridge, at the mouth of the River Trent; the bridge at the narrows of Lake Simcoe; the Dunnville bridge; the Caledonia bridge; the Brantford bridge; the Paris bridge; the Delaware bridge; the Chatham bridge; and all other canals, locks, dams, slides, bridges, roads, or other public works of a like nature, constructed

or to be constructed, repaired or improved, at the expense of the province.

#### Maximum Tolls.

See the Act, Schedule B., 1, 2, 3, 4, 5, 6.

By 10 & 11 Vic. c. 24, § 7, notwithstanding Schedule B. 4, in 9 Vic. c. 37 (*relating to the maximum tolls on public roads*), the Governor in Council is authorised, on report of the commissioners, to place the toll-gates on the said roads, in that schedule mentioned, at such places and distances from each other as shall appear to him advisable and requisite; and to vary the schedule in all or any of the particulars, so as the rates of toll shall not be increased beyond the amount in the said schedule mentioned, on each time of passing any toll-gate or gates, and to notify the same in the *Official Gazette*. § 8. Tolls at the several toll-gates may be farmed or leased. § 9. Timber passing slides may be detained until tolls are paid.

By 12 Vic. c. 4, § 1, schedules of maximum tolls annexed to 9 Vic. c. 37, are repealed—§ 2, and the schedules to this act are substituted instead thereof, and to have the same effect as if the schedules to this act had been annexed to the former act [9 Vic. c. 37]. § 5. The public road from Dundas to Waterloo is vested in the crown, and placed under the control of the commissioners.

By 12 V. c. 5, § 12, the Governor in Council is authorised to enter into arrangements with any of the municipal or district councils, or other local corporations or authorities, or with any company in Lower or Upper Canada, *incorporated* for the purpose of constructing or holding such works, or works of like nature in the same section of the province, for the transfer to them of any of the public roads, harbours, bridges or public buildings, which it may be found more convenient to place under the management of such local authorities or companies; and on the completion of such arrangements, to *grant* for ever, or for any term of years, all or any of such roads, harbours, bridges or public buildings, to the district or municipal council or other local authority or company with whom such arrangement may have been made. § 13. Such grant to be effected by order in council; and nothing in this act, or in any order in council, shall exempt any person from punishment or penalty imposed by any act or law, or under the authority of any act or law, for any offence relative to any public work or works; but so much of any such penalty as would otherwise belong to the crown shall (if so provided in the order in council) belong to the grantee under such order; otherwise, it shall belong to the crown.

By 12 Vic. c. 84, entitled "an act to authorise the formation

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of joint stock companies, for the construction of roads and other works in Upper Canada," any number of persons not less than five may, in Upper Canada, form themselves into a company or companies, for the purpose of constructing plank and other roads, under the provisions set forth in the act. [The provisions will be found more fully stated under the title of "Highways," p. 351.]

By 13 & 14 Vic. c. 13, the commissioners are authorised to acquire lands in the neighbourhood of any public work, with the like powers conferred by 6 Vic. c. 37.

By 13 & 14 Vic. c. 14, entitled "an act to extend the acts for the formation of companies for constructing roads and other works, to companies formed for the purpose of acquiring public works of like nature," after reciting that it was expedient to extend the benefit of the acts hereinafter mentioned to companies to be formed for the purpose of acquiring and holding public works or property, under the provisions of the act authorising the transfer of such works or property to any such company, or to other parties therein designated, it is enacted by § 1—that, subject to the provisions of this act, the act 18 Vic. c. 56 (*which relates to Lower Canada*), and the act 12 Vic. c. 84 (*which relates to Upper Canada*), shall be and are hereby extended, and shall apply to any company to be formed for the purpose of acquiring for ever, or for any term of years, any of the public roads, harbours, bridges or public buildings, which may be lawfully transferred to any such company under the act 12 Vic. c. 5, or for the purpose of so acquiring and of improving or extending any such public work, as fully and effectually as if such purpose were expressly enumerated in the said acts *firstly* and *secondly* mentioned: *Provided always*, that, notwithstanding anything in either of the said acts, no company to be formed under this act shall be liable to be opposed or prevented from acquiring such work, or from using and working the same, by any municipal council or other party, nor shall the company be bound to make any report respecting such work, to any municipal authority; nor shall such municipal authority, or the crown, have the right of taking such work at the end of any term of years; but the provisions of the said acts respectively, as to such opposition and prevention, or to such report, or to the taking of the works or property of the company by any municipal authority, or by the crown, shall apply only to the extension of the same beyond the local limits of the work when transferred to the company; nor shall any of the provisions of the said acts which shall be inconsistent with any lawful provision or condition in any order in council legally made under the act *firstly* mentioned, or with

the rights transferred by the same, apply to the company to which such order in council shall relate; but nothing herein contained shall prevent the reservation in any such order of the power of taking any such work, with or without any such extension, and by the crown, or any municipal authority, on the terms and conditions therein to be expressed: *Provided always*, that § 35 of the *first* cited act, and § 37 of the act *secondly* cited, shall apply to roads, bridges and other works transferred to any company, and to the company to whom the same shall have been transferred in relation to such roads, bridges and works. § 2. The tolls to be taken by any such company on any such public work, not being a road, shall not be regulated by the provisions of the acts *firstly* and *secondly* mentioned, but by 12 Vic. c. 4, unless some *lower maximum* be fixed by order in council, transferring the work to the company; and the tolls to be levied on any road, or any extension of such public works, shall be regulated by the acts *firstly* and *secondly* mentioned, in the absence of any special provision for lower rates in the order in council aforesaid. § 5. No road, bridge or public work, shall be transferred to any company without the reservation of power on the part of the government to resume the same at any time after the expiration of a period which shall not exceed *ten* years, on the conditions to be embodied in the order in council.

### PUBLIC WORSHIP.

By 4 & 5 V. c. 27, § 31, if any person shall wilfully disturb, interrupt or disquiet any assemblage of people met for religious worship, by profane discourse, by rude and indecent behaviour, or by making a noise, either within the place of worship, or so near it as to disturb the order and solemnity of the meeting, such person shall, upon conviction before any justice of the peace, on the oath of one or more credible witnesses, forfeit and pay any sum not exceeding £5 as such justice shall think fit; § 32, to be levied with the costs within the period specified for payment thereof, at the time of conviction by the justice before whom such conviction may have taken place, and in default thereof, the offender shall be committed for any term, not exceeding one month, unless the costs and fine shall be sooner paid. § 36. Appeal lies to the sessions; for this, see title "Common Assault," p. 61; and for the form of conviction, see p. 56.

### PUNISHMENT.

*Under the 4 & 5 V. c. 24.*

**Felony.**—§ 24. Every person convicted of any felony, not

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punishable with death, shall be punished in the manner prescribed by the statute or statutes specially relating to such felony; and that any person convicted of any felony for which no punishment hath been or hereafter may be specially provided, shall be deemed to be punishable under this act, and shall be liable at the discretion of the court to be imprisoned at hard labour in the Provincial Penitentiary, for any term not less than seven (a) years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years.

*Transportation.*—§ 25. If any person sentenced or ordered, or hereafter to be sentenced or ordered to be transported, or who shall have agreed, or shall agree, to transport or banish himself, or herself, on certain conditions, either for life or for any number of years, shall be afterwards at large, within any part of this province, contrary to such sentence, order, or agreement, without some lawful cause, before the expiration of his or her term of transportation or banishment, every such offender shall be guilty of felony, and shall be transported beyond the seas for his or her natural life, and previously to transportation shall be imprisoned for any term not exceeding four years; and every such offender may be tried either in the district, county or place where such offender shall be found at large, or at the district, county, or place in or at which sentence or order of transportation or banishment was passed or made. § 26. In any indictment or information against any offender for being at large in this province, contrary to the provisions of this act, or of any other act hereafter to be in force in this province, it shall be sufficient to allege the sentence or order of transportation or banishment of such offender, without alleging any indictment, information, trial, conviction, judgment, or other proceeding, or any pardon or intention of mercy, or signification thereof, of or against, or in any manner relating to such offender. § 27. The clerk of the court or other officer having the custody of the records of the court, where any such sentence or order of transportation or banishment shall have been passed or made, or his deputy, shall, at the request of any person, on behalf of her Majesty, make out and give a certificate in writing, signed by him, containing the effect and substance only (omitting the formal part) of any indictment, information and conviction, of such offender, and of the sentence or order for his or her transportation or banishment (not taking for the same more than the sum of five shillings); which certificate shall be sufficient evidence of the conviction and sentence, or order for the transportation

or banishment of such offender; and every such certificate shall be received in evidence upon proof of the signature of the person signing the same.

**Imprisonment.**—§ 28. Where any person shall be convicted of any offence punishable under this act, for which imprisonment may be awarded, it shall be lawful for the court to sentence the offender to be imprisoned, or to be imprisoned and kept to hard labour, in the common gaol or house of correction, and also to direct that the offender shall be kept in solitary confinement for any portion or portions of the terms of such imprisonment, or of such imprisonment with hard labour, not exceeding one month at any one time, and not exceeding three months in any one year, as to the court in its discretion shall seem meet. § 29. Whenever sentence shall be passed for felony on a person already imprisoned under sentence for another crime, it shall be lawful for the court to award imprisonment for the subsequent offence, to commence at the expiration of the imprisonment, to which such person shall have been previously sentenced, although the aggregate term of imprisonment may exceed the term for which such punishment could be otherwise awarded.

**Second conviction.**—§ 30. If any person shall be convicted of any felony not punishable with death, committed after a previous conviction for felony, such person shall, on such subsequent conviction, be liable, at the discretion of the court, to be imprisoned at hard labour in the Provincial Penitentiary for any term not less than seven years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years; and in any indictment for any such felony, committed after a previous conviction for felony, it shall be sufficient to state that the offender was at a certain time and place convicted of felony without otherwise describing the previous felony, and a certificate, containing the substance and effect only (omitting the formal part) of the indictment and conviction for the previous felony, purporting to be signed by the clerk of the court, or other officer having the custody of the records of the court, where the offender was first convicted, or by the deputy of such clerk or officer, for which certificate a fee of five shillings and no more shall be demanded or taken, shall upon proof of the identity of the person of the offender be sufficient evidence of the first conviction, without proof of the signature or official character of the person appearing to have signed the same; and if any such clerk, officer or deputy shall use any false certificate of any indictment and conviction for a previous felony, or of any sentence or order of transportation or banishment, or if any person other than such clerk,

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officer or deputy, shall sign any such certificate as such clerk, officer or deputy, or shall utter any such certificate with a false or counterfeit signature thereto, every such offender shall be guilty of felony, and being lawfully convicted thereof, shall be liable at the discretion of the court, to be imprisoned at hard labour in the Provincial Penitentiary, for any term not less than seven years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years.

**Pillory abolished.**—§ 31. That from and after the commencement of this act, judgment shall not be given and awarded against any person or persons convicted of any offence that such person or persons do stand in or upon the pillory, any law, statute, or usage to the contrary notwithstanding; provided that nothing herein contained shall extend, or be construed to extend, in any manner to change, alter, or affect any punishment whatever which may now be by law inflicted, in respect of any offence, excepting only the punishment of the pillory.

**Commencement of Imprisonment.**—That the period of imprisonment in the Provincial Penitentiary in pursuance of any sentence passed under this act, or under any other act relating to the punishment of offences by confinement and imprisonment in the Provincial Penitentiary, shall be held to commence from the period of passing such sentence, whether the convict upon whom such sentence shall be passed shall be removed to the said Provincial Penitentiary forthwith, or be detained in custody in any other prison or place of confinement previously to such removal.

*Under the 4 and 5 V. c. 25.*

**Simple Larceny.**—§ 3. Any person convicted of simple larceny, or felony punishable as simple larceny, shall (except as otherwise provided) be liable, at the discretion of the court, to be imprisoned at hard labour in the Provincial Penitentiary for any term not less than seven years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years.

**Felony or Misdemeanor.**—§ 4. Any person being convicted of felony or misdemeanor punishable under this act, for which imprisonment may be awarded, it shall be lawful for the court to sentence the offender to be imprisoned, or to be imprisoned and kept to hard labour in the common gaol or house of correction, and also to direct that the offender shall be kept in solitary confinement for any portion or portions of such imprisonment, or of such imprisonment with hard labour, not exceeding one month at any time, and not exceeding three months in any one year, as to the court shall seem meet.

*Under the 4 & 5 V. c. 26.***Felony or Misdemeanor.**—§ 27. Being a similar provision to the last.*Under the 4 & 5 V. c. 27.***Administering Poison.**—§ 9. Whosoever shall administer or cause to be taken by any person, any poison or other destructive thing, or shall stab, cut or wound any person, or shall by any means whatsoever cause to any person any bodily injury dangerous to life, with intent to commit murder, shall be guilty of felony, and being convicted thereof shall suffer death.**Attempt to Murder.**—§ 10. Whosoever shall attempt to administer to any person any poison or other destructive thing, or shall shoot at any person, or shall by drawing a trigger or in any other manner, attempt to discharge any kind of loaded arms at any person, or shall attempt to drown, suffocate, or strangle any person, with intent to commit the crime of murder, shall, although no bodily injury shall be effected, be guilty of felony; and, being convicted thereof, shall be liable, at the discretion of the court, to be imprisoned at hard labour in the provincial penitentiary for the term of his natural life, or for any term not less than seven years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years.**Cutting and Maiming.**—§ 11. Whosoever unlawfully and maliciously shall shoot at any person, or shall by drawing a trigger, or in any other manner, attempt to discharge any kind of loaded arms at any person, or shall stab, cut or wound any person, with intent in any of the cases aforesaid to maim, disfigure, or disable such person, or to do some other grievous bodily harm to such person, or with intent to resist or prevent the lawful apprehension or detainer of any person, shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the court, to be imprisoned at hard labour in the Provincial Penitentiary for the term of his natural life, or for any term not less than seven years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years.**Using Explosive or Corrosive Matter.**—§ 12. Whosoever shall unlawfully and maliciously send or deliver to, or cause to be taken, or received by any person, any explosive substance, or any other dangerous or noxious thing, or shall cast or throw upon or otherwise apply to any person, any corrosive fluid, or other destructive matter, with intent to burn, maim, disfigure, or disable any person, or to do some other grievous bodily harm to any person, and whereby any person shall be burnt, maimed,

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disfigured or disabled, or receive some other grievous bodily harm, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be imprisoned at hard labour in the Provincial Penitentiary for the term of his natural life, or for any term not less than seven years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years.

**Abortion.**—§ 13. Whosoever, with intent to procure the miscarriage of any woman, shall unlawfully administer to her, or cause to be taken by her, any poison or other noxious thing, or shall unlawfully use any instrument or other means whatsoever with the like intent, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be imprisoned at hard labour in the Provincial Penitentiary for the term of his natural life, or for any term not less than seven years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years.

**Homicide.**—§ 27. No punishment shall be incurred by any person who shall kill another by misfortune, or in his own defence, or in any other manner without felony.

**Accessories.**—§ 35. Every principal in the second degree, and every accessory before the fact, shall be punishable with death or otherwise, in the same manner as the principal in the first degree is by this act punishable; and every accessory after the fact to any felony punishable under this act, shall, on conviction, be liable to be imprisoned for any term not exceeding two years.

**Imprisonment.**—§ 36. When any person shall be convicted of any offence punishable under this act, for which imprisonment may be awarded, it shall be lawful for the court to sentence the offender to be imprisoned, or to be imprisoned and kept to hard labour, in the common gaol or house of correction, and also to direct that the offender shall be kept in solitary confinement for any portion or portions of such imprisonment; or of such imprisonment with hard labour, not exceeding one month at any one time, and not exceeding three months in any one year, as to the court in its discretion shall seem meet.

**Assault.**—§ 37. On the trial of any person for any of the offences hereinbefore mentioned, for any felony whatever, where the crime charged shall include an assault against the person, it shall be lawful for the jury to acquit of the felony, and to find a verdict of guilty of assault against the person indicted, if the evidence shall warrant such finding; and when such verdict shall be found, the court shall have power to imprison the person so found guilty of an assault, for any term not exceeding three years.



**Military.**—§ 38. Provided always, and be it enacted, that nothing herein contained shall alter or affect any of the laws relating to the government of her Majesty's land or naval forces.

**Pardon.**—§ 39. It shall be lawful for the Queen's Majesty, and for the governor, lieutenant-governor, or person administering the government of the province, to extend the royal mercy to any person imprisoned by virtue of this act, although he shall be imprisoned for non-payment of money to some party other than the crown.

By the 6 V. c. 5, § 1, after reciting that it was expedient to enable the courts before whom offenders might be convicted in certain cases better to proportion the punishment to the guilt of the offence, it is enacted, that so much of the 4 & 5 V. c. 24, 25, 26 & 27 (or of any other law), as is inconsistent with this, shall be repealed. § 2. That for every offence for which by any of the above-mentioned acts the offender is liable to imprisonment in the provincial penitentiary, but may instead thereof be imprisoned in any other prison for any term not exceeding two years, the offender may, if convicted, be punished, in the discretion of the court, by imprisonment in the provincial penitentiary for any term not less than three years, and not exceeding the longest term for which such offender might have been so imprisoned if this act had not been passed, or by imprisonment in any other prison or place of confinement for any term not exceeding two years, in the manner prescribed by such act: Provided, that this act shall not prevent such offender from being punished by imprisonment in the provincial penitentiary for life, if he might have been so punished if this act had not been passed. § 3. That for every offence for which by any of the said acts the offender might be punished by imprisonment for such term as the court should award, or for any term exceeding two years, such imprisonment, if awarded for a longer term than two years, shall be in the provincial penitentiary. § 4. That for every offence for which by any of the said acts, or by any other act of law, the offender might, if this act had not been passed, have been punished by transportation beyond seas, such offender may, if convicted after the passing of this act, be punished by imprisonment in the provincial penitentiary for any term for which he might have been transported if this act had not been passed, or by imprisonment for life, if without this act he might have been punished by transportation for life.

### QUAKERS.

By 40 G. III. c. 6, it is enacted, that every Mononist or

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Tunker, in any case in which an oath is required by law, or upon any lawful occasion wherein the affirmation or declaration of a Quaker will by law be admitted, shall be and is hereby permitted to make his or her affirmation or declaration in the same manner and form as a Quaker by the laws now in force is required to do, having first made the following affirmation or declaration:

"I, A. B., do solemnly, sincerely and truly affirm and declare, that I am one of the Society of Tunkers or Menonists" [as the case may be].

Which affirmation or declaration shall be of the same force and effect in all courts of justice, and other places where by law an oath is required, as if such Menonist or Tunker had taken an oath in the usual form; and all persons authorised to administer an oath, may administer such affirmation or declaration. § 2. Any person making a false affirmation or declaration, shall incur the pains and penalties of perjury. § 3. No Menonist or Quaker shall by virtue of this act, be qualified to serve on juries in criminal cases, or hold or enjoy any office under government. By 10 G. IV. c. 1, Quakers, Menonists, Tunkers and Moravians are admitted to give evidence in criminal cases, upon making an affirmation in the following form in lieu of any oath:

"I, A. B., do solemnly, sincerely and truly declare, that I am one of the society called, Quakers, Menonists, Tunkers, or Unitas Fratrum, or Moravians" [as the case may be].

And any person convicted of a false affirmation, shall incur the pains and penalties of perjury; but such persons shall not be permitted to serve on juries in criminal cases.

By 4 & 5 Vic. c. 2, § 2. Quakers, Menonists, or Tunkers, shall not be compelled to serve in the Upper Canada militia, but on any such producing a certificate, signed by the clerk, pastor, minister or clan, of the meeting or society to which he shall belong, he shall be exempt: *Provided*, that every such person, from the age of sixteen to sixty, claiming such exemption, shall, on or before the first of February in every year, give in his name and place of residence to the assessor of the town or township where he shall reside, and shall pay in time of peace 10s. per annum, and in time of invasion or insurrection, or when any of the militia of the district in which such person shall reside shall be called out on actual service, the sum of £5, in lieu and discharge of such militia service. § 3. Assessors required to annex a column to the assessment roll, and therein insert the names of such persons, and affix the money to be paid opposite, which the collector shall collect as any ordinary assessment, and pay the same to the town clerk, to be expended within the township where levied, in aid of any

road tax or assessment raised or levied therein. § 4. Said monies to be paid out by the town clerk from time to time to the order of the road or path master of the division wherein such fine shall have been levied, and expended on the public roads, highways and bridges, within such township or place as by law directed, and to render an account thereof upon oath to the clerk of such town, township or place, who shall report the same to the general quarter sessions, and if any such path-master or town-clerk shall fail to render such account, or to pay over and distribute such monies, he shall be subject to a penalty of £10 currency, to be recovered with costs by summary process, before any one or more justices of the peace for the division or district in which such town, township or place shall lie.

By 9 Vic. c. 28, § 1, the 4 & 5 V. c. 2, is repealed, and by § 31, Quakers, Menonists and Tunkers, are exempt from serving in the militia on payment of 5s. per annum in time of peace, and in case of war a sum not exceeding £20.

By 12 Vic. c. 88, the 31 § of the above act is repealed, and the 4 & 5 Vic. c. 2, revived.

### RAILROADS.

By the 12 Vic. c. 28, Railroad companies, when required by the postmaster general, the commander of H. M. forces, or any person having the command or superintendence of the police force, shall carry the mail, naval or military forces, or militia, artillery, ammunition or other stores, policemen, constables and others travelling on her Majesty's service, and place any electric telegraph belonging to them at the disposal of her Majesty's government or such officer as aforesaid; such services to be performed upon such terms as the parties may agree, and in case of difference by the Governor in council.

By 12 Vic. c. 29, the Governor in council is authorised to guarantee the interest on loans to any company chartered by the legislature for the construction of a line of railway not less than 75 miles in extent, on condition that the interest shall not exceed six per cent.; that the sum on which interest shall be so guaranteed shall not be greater than that expended by the company before the guarantee given, and shall be sufficient to complete their road; no such guarantee to be given until one-half of the entire line of road shall have been completed; that such interest be the first charge on the tolls, and no dividend declared till such interest paid; that so long as any part of the principal on which interest is guaranteed by the province remains unpaid, no dividend shall be paid to the stockholders until a sum equal to three per cent. on the amount so remain-

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ing unpaid shall have been set aside from the surplus profits and paid over to the receiver general under the provisions contained in this act as a sinking fund, and that the province shall have the first mortgage and lien upon the road, tolls and property of the company.

## RAPE.

### *Of Rape in general.*

Rape signifies the carnal knowledge of a woman forcibly and against her will, and above the age of ten years, and was felony at common law.—2 *Inst.* 180. But by statute 3 Edw. I. c. 13, it was made only a misdemeanor. Afterwards, by stat. 13 Edw. I. c. 34, it was made felony again; and by stat. 18, Eliz. c. 7, § 1, was made capital.

By § 4 of the latter statute, it is also enacted, that if any person shall unlawfully and carnally know and abuse any woman child under the age of ten years, every such unlawful and carnal knowledge shall be felony. In which case, the consent or non-consent is immaterial; as by reason of her tender years, she is incapable of judgment and discretion.—4 *Bl.* 212.

The offence of rape is no way mitigated by shewing that the woman at last yielded to the violence, if such her consent was forced, by fear of death or of duress.—1 *Haw.* 108. Nor is it any excuse that the woman is a common prostitute; for she is still under the protection of the law, and may not be enforced—1 *Haw.* 108—nor that she consented after the fact.—*Ibid.* It is said by Mr. Dalton, that if a woman, at the time of the supposed rape, do conceive with child, by the ravisher, this is no rape; for (he says) a woman cannot conceive, except she doth consent. But Hawkins observes, that this opinion seems very questionable; not only because the previous violence is no way extenuated by such a subsequent consent, but also because, if it were necessary to shew that the woman did not conceive, the offender could not be tried until such time as it might appear whether she did or not; and likewise, because the philosophy of the notion may be very well doubted of.—1 *Haw.* 108. And L. Hale says, this opinion in Dalton seems to be no law.—1 *H. H.* 731.

### *Evidence in Rape.*

Lord Coke, defining carnal knowledge, says, there must be *penetratio*—that is, *rem in re*; but the least penetration maketh it carnal knowledge.—3 *Inst.* 59, 50; *East. P. C.* 437. There must also be an *emissio seminis*; therefore in Hill's case, where the jury found the prisoner guilty, but said they did not find the emission [for, from interruption, it appeared probable that that was not effected], a great majority of the judges held

that both penetration and emission were necessary, but thought that the fact should be left to the jury.—*Hill's case, East. P. C. 439.* From *Hill's case* it appears that the fact of penetration is *prima facie* evidence of emission: so, where the prisoner remained on the body of the woman as long as he pleased, without interruption, this was held sufficient evidence to be left to a jury, of an actual rape.—*Harmwood's case, E. P. C. 440; S. P. Kelly's case, Bodmin, 1815, coram* Chambre. Where the woman was dead, the evidence of other persons and her own depositions (which contained no mention of emission), were held sufficient to convict the prisoners; and that the jury might collect the fact of emission from other evidence.—*Fleming and Windham's case, 2 Leach, 855.*

The party ravished may give evidence on oath, and is in law a competent witness; but the credibility of her testimony, and how far forth she is to be believed, must be left to the jury, and is more or less credible, according to the circumstances of facts that occur in the testimony.—1 *H. H. 632.* For instance, if the witness be of good fame; if she *presently* discovered the offence and made pursuit after the offender; shewed circumstances and signs of the injury; if the place where the offence was committed was *remote* from habitation; if the offender fled for it: these and the like are concurring evidences to give greater probability to her testimony, when proved by others as well as herself.—1 *H. H. 633.* On the other hand, if she concealed the injury for any length of time after she had the opportunity to complain; if the place where the offence was alleged to have been committed were *near* to inhabitants, or a thoroughfare for passengers, and she made no outcry when the offence was perpetrated, so that she might have been heard by others; or if a man prove himself to have been in another place, or in other company, at the time she charges him with the fact; or if she is wrong in the description of the place, or swears the fact to have been done in a place where it was impossible the man could have access to her at that time—as, if the room was locked up, and the key in the custody of another person: these and the like circumstances carry a strong presumption that the testimony is false or feigned.—1 *H. H. 633.*

Upon the whole, rape, it is true, is a most detestable crime, and therefore ought severely and impartially to be punished with death; but it must be remembered that it is an accusation easily to be made, and hard to be proved, and harder to be defended by the party accused, though never so innocent: therefore, a wise jury will be cautious upon trials of offences of this nature, that they be not so much transported with indignation at the heinousness of the offence as to be over-hastily carried

to the conviction testimony.  
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to the conviction of the person accused thereof, by the confident testimony, sometimes of malicious and false witnesses.—1 H. H. 635, 636.

A male infant, under the age of fourteen years, is presumed by law to be incapable to commit a rape, and therefore, it seems, cannot be found guilty of it.—4 Bl. 212; 1 Hal. P. C. 631.

#### *Punishment for Rape.*

By the 4 & 5 Vic. c. 27, § 16, every person convicted of the crime of rape, shall suffer death as a felon. § 17. If any person shall unlawfully and carnally know and abuse any girl under the age of ten years, every such offender shall be guilty of felony, and being convicted thereof shall suffer death as a felon; and if any person shall unlawfully and carnally know and abuse any girl, being above the age of ten years and under the age of twelve years, every such offender shall be guilty of a misdemeanor, and being convicted thereof shall be liable to be imprisoned for such term as the court shall award. In cases of rape, carnal knowledge shall be deemed complete upon proof of penetration only.

By the 6 V. c. 5, § 5, where any person shall be convicted of any assault with intent to commit rape, the court may sentence the offender to be imprisoned at hard labour in the provincial penitentiary for any term not exceeding three years, or imprisoned in any other prison for any term not exceeding two years.

(See also title "Punishment.")

#### *Information.*

[The common form of the commencement of an information will be found, ante p. 406.] It should state when, where, and by whom the offence was perpetrated; that the complainant resisted the force and violence, and called aloud for assistance; and that she immediately acquainted her neighbours and friends with the occurrence [as the case may be]. The depositions of other witnesses should also be taken, to confirm the testimony of the complainant.

#### *Warrant to Apprehend the Party.*

County of —, } To the constable of the township of —, and all  
to wit. } other peace officers in the said county:

Forasmuch as A. B. of —, in the county aforesaid, labourer, hath this day been charged before me, J. P., esquire, one of her Majesty's justices of the peace for the said county, on the oath of C. D. of the township of —, in the said county, single woman [or otherwise, as the case may be], for that he, the said A. B., on the — day of —, violently and feloniously did assault her, the said C. D., and her the said C. D. then and there violently and against her will, feloniously did ravish and carnally know: These are therefore to command you, in her Majesty's name, forthwith to apprehend and bring before me, on some

other of her Majesty's justices of the peace in and for the said county, the body of the said A. B., to answer unto the said charge, and to be further dealt with according to law. Herein fail you not.

Given under my hand and seal, at —, in the county aforesaid, the — day of —, in the year of our Lord, 18—.

#### *Commitment for a Rape.*

County of —, } J. P. esquire, one of her Majesty's justices of the  
to wit, } peace for the said county: to the constable of the  
township of —, in the said county, and to the keeper of the common  
gaol at —, in the said county :

These are to command you, the said constable, in her Majesty's name, forthwith to convey and deliver into the custody of the said keeper of the said common gaol, the body of A. B., charged this day before me, the said justice, on the oath of C. D. of —, for that he the said A. B. on the — day of —, in the year of our Lord one thousand eight hundred and —, at —, in the said county, violently and feloniously did assault her, the said C. D., and her the said C. D. then and there violently and feloniously and against her will, feloniously did ravish and carnally know, against the form of the statute in that case made and provided; and you the said keeper are hereby required to receive the said A. B. into your custody, in the same common gaol, and him there safely to keep, until he shall be thence delivered by due course of law. Herein fail not.

Given under my hand and seal, the — day of —.

#### *Commitment for carnally knowing a girl under 10 years.*

*Commencement as before.*] on the — day of —, in the year of our Lord one thousand eight hundred and —, at —, in the said county, feloniously did assault one C. D., a girl under the age of ten years, to wit, of the age of nine years, and her the said C. D. then and there feloniously did unlawfully and carnally know and abuse, against the form of the statute in that case made and provided; and you, the said keeper, &c. [*as before, to the end.*]

### RECEIVERS OF STOLEN GOODS.

*Felony.*—By 4 & 5 Vic. c. 25, § 46, if any person shall receive any chattel, money, valuable security, or other property whatsoever, the stealing or taking whereof shall amount to felony either at common law or by virtue of this act, such person knowing the same to have been feloniously stolen or taken, every such receiver shall be guilty of felony, and may be indicted and convicted either as an accessory after the fact, or for a substantive felony; and in the latter case, whether the principal felon shall or shall not have been previously convicted, or shall or shall not be amenable to justice; and every such receiver, howsoever convicted, shall be liable, at the discretion of the court, to be imprisoned at hard labour in the Provincial Penitentiary for any term not less than seven years, or impris-

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soned in any other prison or place of confinement for any term not exceeding two years (a) ; provided always that no person, however tried for receiving as aforesaid, shall be liable to be prosecuted a second time for the same offence.

**Misdemeanor.**—§ 47. If any person shall receive any chattel, money, valuable security or other property whatsoever, the stealing, taking, obtaining or converting whereof is made an indictable misdemeanor by this act, such person knowing the same to have been unlawfully stolen, taken, obtained or converted, every such receiver shall be guilty of a misdemeanor, or may be indicted and convicted thereof, whether the person guilty of the principal misdemeanor shall or shall not have been convicted thereof, or shall or shall not be amenable to justice ; and every such receiver shall on conviction be liable, at the discretion of the court, to be imprisoned at hard labour in the Provincial Penitentiary for any other term not less than seven years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years (a).

**Trial.**—§ 48. If any person shall receive any chattel, money, valuable security or other property whatsoever, knowing the same to have been feloniously or unlawfully stolen, taken, obtained or converted, every such person, whether charged as an accessory after the fact to the felony, or with a substantive felony, or with a misdemeanor only, may be dealt with, tried and punished in any district, county or place in which he shall have or shall have had any such property in his possession, or in any district, county or place in which the party guilty of the principal felony or misdemeanor may by law be tried, in the same manner as such receiver may be dealt with, indicted, tried and punished in the district, county or place where he actually received such property.

**Taking Rewards.**—§ 50. Every person who shall corruptly take any money or reward, directly or indirectly under pretence or on account of helping any person to any chattel, money, valuable security or other property whatsoever, which shall by any felony or misdemeanor have been stolen, taken, obtained or converted as aforesaid, shall (unless he cause the offender to be apprehended and brought to trial for the same) be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be imprisoned at hard labour in the Provincial Penitentiary for any term not less than seven years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years (a).

**Advertising Rewards.**—§ 51. If any person shall publicly

advertise a reward for the return of any property whatsoever which shall have been stolen or lost, and shall in such advertisement use any words purporting that no question will be asked, or shall make use of any words in any public advertisement purporting that a reward will be given or paid for any property which shall have been stolen or lost, without seizing or making any inquiry after the person producing such property, or shall promise to offer in any such public advertisement to return to any pawnbroker or other person who may have bought or advanced money by way of a loan upon any property stolen or lost the money so paid or advanced, or any other sum of money or reward for the return of such property, or if any person shall print or publish any such advertisement in any of the above cases, every such person shall forfeit the sum of £20 for every such offence to any person who will sue for the same by action of debt, to be recovered with full costs of suit.

**Second Offence.**—§ 52. Where the stealing or taking of any property whatsoever is by this act punishable on summary conviction, either for every offence, or for the first and second offence only, or for the first offence only, any person who shall receive any such property knowing the same to be unlawfully come by, shall on conviction thereof before a justice of the peace be liable, for every first, second or subsequent offence of receiving, to the same forfeiture or punishment to which a person guilty of a first, second or subsequent offence of stealing or taking such property is by this act made liable.

*Warrant to apprehend an Accessory after the fact for receiving stolen goods.*

County of —, } To the Constable of — and all other her Majesty's  
to wit. } peace officers within the said county.

Whereas A. B. hath this day made oath before me, S. P., Esquire, one of her Majesty's justices of the peace in and for the said county, [here state the facts set forth in the information], and also, that the said A. B. hath cause to suspect, and doth suspect, that T. T. of —, labourer, hath feloniously bought and received the said [the property stolen] knowing the same to have been feloniously stolen. These are therefore to command you forthwith to apprehend and bring before me, at this place, the body of the said T. T., to answer to the said charge, and to be further dealt with according to law.

Given under my hand and seal at —, in the said county, this — day of —, 18—.

*Commitment of an Accessory for receiving stolen goods, knowing the same to have been stolen.*

County of —, } To the keeper of her Majesty's gaol at —.  
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due course of law, the body of T. T. herewith sent you, and charged before me, one of her Majesty's justices of the peace acting in and for the said county, on the oath of C. D. of —, with having feloniously received (*describe the stolen articles*), lately stolen from the dwelling-house of the said C. D., at — aforesaid, by some person or persons at present unknown, the said T. T. well knowing the said (*describe the articles*) to have been feloniously stolen.

Given under my hand and seal at —, this — day of — 18—.

*Commitment of a Receiver of Stolen Goods with the Principal Felon. (Archbold.)*

County of —, } J. P., esquire, one of her Majesty's justices of the  
to wit. } peace for the said county; to the constable of  
—, in the said county, and to the keeper of the common gaol at —,  
in the said county:

These are to command you, the said constable, in her Majesty's name, forthwith to convey and deliver into the custody of the said keeper of the said common gaol, the bodies of A. B. and L. M., charged before me, this — upon the oath of C. D. and others, for that the said A. B. on the — day of —, in the year of our Lord, — at —, in the said district (*here state the larceny, &c., as in ordinary cases*); and that he the said L. M. afterwards at — aforesaid (six brass candlesticks and four pewter dishes, being parcel of), the goods and chattels above mentioned, so as aforesaid, feloniously (*and burglariously*) stolen, taken and carried away, feloniously did receive, he the said L. M. then well knowing the said goods and chattels (last mentioned) to have been feloniously (*and burglariously*) stolen, taken and carried away as aforesaid, against the form of the statute, in that case made and provided; and you, the said keeper, are hereby required to receive the said A. B. and L. M. into your custody in the same common gaol, and them there safely to keep until they shall be thence delivered by due course of law. Herein fail not.

Given under my hand and seal, the — day of —, in the year of our lord —.

*Against the Receiver only for the Felony. (Archbold.)*

*Commencement as before*] on the — day of —, in the year of our Lord — at —, in the said county, one silver tankard, of the goods and chattels of C. D., by a certain ill-disposed person, then lately before feloniously stolen, taken and carried away, of the same evil disposed person feloniously did receive, he the said A. B. well knowing the said goods and chattels to have been feloniously stolen, taken and carried away; against the form of the statute in that case made and provided; and you the said keeper, &c. (*as before to the end*.)

RECOGNIZANCE.

A recognizance is an obligation of record entered into before some magistrate or magistrates, duly authorised, with condition to appear at the sessions or assizes, or to keep the peace, &c. If a person refuse to give recognizance, he may be committed.—*Dalt. c. 168.* A recognizance must be made to the

king; it must contain the names, places of residence, and additions of the principals and sureties, and the penalty in which they are bound: the parties need not sign it; it becomes a matter of record as soon as taken and acknowledged, although not made up by the justice, and only entered in his book.—*Dalt. c. 168.* Recognizance taken for the peace must be certified to the next sessions, that the party may be called, and if they do not appear they will be estreated; and by stat. \*3 Wm. IV. c. 3, recognizances taken in felony or misdemeanor must be delivered to the public prosecutor before, or at the opening of the court. § 2. Or such justices may be fined. § 5. When a charge is made before a magistrate, he may bind over the party making the charge to prosecute and give evidence, and also all who can give material evidence; and, on their refusal, may commit them. A married woman is incapable of entering into a recognizance; but if she altogether refuse to appear at the sessions and to find sureties for such appearance, when such appearance is essential to the conviction of an offender, she may be committed. The proper course where a married woman is a material witness, is to bind over her husband or other competent person, as surety for her appearance.—*Dickenson, Q. S. 74*; also infants (that is, persons under 21 years of age), who cannot legally bind themselves, must procure others to be bound for them, and in default thereof may be committed.—*Chitty's C. L. p. 91.* The usual manner of taking a recognizance, is by calling the parties by name, thus:

"You, A. B., acknowledge to owe to our sovereign lady the Queen the sum of £20, (and in case of sureties) (and you, C. D. and E. F. acknowledge to owe to our sovereign lady the Queen the sum of £10 each) to be levied upon your respective goods and chattels, lands and tenements, for the use of our said laid the Queen, her heirs and successors, if default shall be made in the condition following:

**Condition of a Recognizance to Prosecute. (Archbold.)**

The condition of this recognizance is such, that if the above bounden A. B. shall personally appear at the next general quarter sessions of the peace, (or at the next general gaol delivery, if intended for the assizes), to be holden in and for the said county of —, at the city of —, in the said county of —, and then and there prefer a bill of indictment against C. D., late of —, labourer, for feloniously stealing, taking, and carrying away (here mention the property stolen), the property of A. O., and shall then also give evidence there, concerning the same, as well to the jurors that shall then inquire of the said felony, as also to them that shall pass upon the trial of the said C. D., that then the said recognizance to be void, or else to stand in full force and virtue.

**Condition**

The condition A. B. said sovereign county of — passes, and the next general sessions of the said county and there to the felonious property of — cion before the court th court witho shall be void

**Condition**

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*Condition of Recognizance, with sureties to appear and answer in Felony. (Dickenson.)*

The condition of this recognizance is such, that if the above-bounden A. B. do, and shall personally appear before the justices of our said sovereign lady the Queen assigned to keep the peace in and for the county of —, and also to hear and determine divers felonies, trespasses, and other misdemeanors within the said county committed, at the next general quarter sessions of the peace to be holden in and for the said county —, at the city of —, in the said county —, then and there to answer our sovereign lady the Queen for and concerning the felonious taking and stealing a certain (*mentioning the article*), the property of X. Y., wherewith the said A. B. stands charged on suspicion before (the justices, naming them), and do and receive what by the court then and there shall be enjoined him, and shall not depart the court without leave or license: then the above written recognizance shall be void, and of none effect, otherwise to remain in full force.

*Condition of a Recognizance, by a witness, to give evidence.*

The condition of the above-written recognizance is such, that if the above bounden E. F. shall personally appear at the next general quarter sessions of the peace (or gaol delivery), to be holden at the city of —, in and for the said county —, and then and there give such evidence as he knoweth, upon a bill of indictment to be exhibited by C. D. of —, yeoman, to the grand jury, against A. B. late of —, labourer, (*for feloniously stealing the property of the said C. D.*), and in case the said bill be found a true bill, then if the said E. F. shall then and there give evidence to the jurors that shall pass upon the trial of the said A. B., upon the said bill of indictment, and not depart thence without leave of the court; then this recognizance to be void, or else to remain in full force.

The justice should demand of each party "*if he is content*;" and upon their answering that he is so, the recognizance is complete, and the defendant is at liberty to depart.

If the condition of the recognizance is not complied with, it is estreated by the court; but during the sitting of the court, upon the party exhibiting a satisfactory affidavit of any sufficient reason for non-compliance with the terms, it has been the invariable practice for the court, on motion being made for that purpose, to take off the estreat, upon such terms as the court may require, such as entering into new recognizance, &c.—*Dickenson, Q. S. p. 668.*

See also title "*Estreat*," ante p. 393.

## RECORDER'S COURT.

By 12 V. c. 81, § 93, it is enacted, that besides a police officer and police magistrate, as provided with respect to incorporated towns, and which shall have the like duties and powers in all respects in such city and the liberties thereof as

is hereinbefore (in the act) provided with respect to the police officers and magistrates for incorporated towns, there shall moreover be a court of record in each of the cities incorporated under this act, to be called the Recorder's Court of such city, and wherein the recorder for the time being shall preside, assisted by one or more of the aldermen of such city, or in the absence of the Recorder from sickness, or other causes, or when there shall be no recorder, the mayor or one of the aldermen of such city, to be elected by the aldermen from among themselves, shall preside; and such court shall in all cases possess the like powers, and have the like jurisdiction as to crimes, offences and misdemeanors committed in such city and the liberties thereof, as the court of quarter sessions of the peace now have or hereafter may have by law in Upper Canada, as to crimes, offences and misdemeanors committed within their local jurisdiction, as well as in all those matters of civil concern not belonging to the ordinary jurisdiction of a court of justice, as have been or may hereafter be by law vested in such courts of quarter sessions of the peace. § 94. Such Recorder's Court to hold four sessions in each year, viz. :—on the second Monday in January, April, July and October. § 95. Inhabitants of cities to be exempt from serving on juries at any other than the city courts, and the courts of assize and *nisi prius*, oyer, terminer and general gaol delivery for the county. § 96. The grand juries of such recorders' courts shall consist of twenty-four persons, to be summoned by the high bailiff under precepts signed by the recorders, or aldermen elected to sit for such recorders, in the same manner as grand juries of the quarter sessions. § 97. Not less than thirty-six nor more than sixty petit jurors to be in like manner summoned. § 98. Such persons only, residing in the cities or liberties thereof, shall compose such juries, as are at present, or hereafter may be liable to be summoned as grand or petit jurors in any court of Upper Canada. § 99. Such grand juries shall have all the power and authority over offences committed in the said cities and liberties thereof, which grand juries for the general quarter sessions now have or hereafter may have. § 100. The like process and proceedings now had in quarter sessions in criminal cases shall and may be used in the recorders' courts when exercising criminal jurisdiction, and the like power to take recognizances, and all other powers and duties incidental to such jurisdiction, and which the quarter sessions now or hereafter may possess by law, together with the powers granted by this act, are hereby vested in the said recorders' courts, as far as regards any offences, crimes and misdemeanors, arising or committed

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within such cities and liberties. § 101. Upon the acquittal of any defendant, the court may, if satisfied there was a reasonable and probable cause for the prosecution, order the costs thereof to be taxed and paid out of the city funds. § 102. Every such recorder shall have the power of suspending from office any high bailiff, chief constable, or constable of the city for any period in his discretion, reporting the same with the cause thereof to the common council of the city, who shall thereupon, in their discretion, dismiss such high bailiff, &c., or direct that he be restored to the duties of his office after the period of such suspension shall have expired; and the recorder is empowered to appoint some other fit and proper person as high bailiff, &c., during such suspension. § 103. Clerks of the common council to be clerks of the recorders' courts, and receive the same emoluments as now appertain to the clerks of the peace. The recorders for cities shall be barristers of Upper Canada of at least not less than five years standing, and shall be appointed by the Crown during pleasure; and every such recorder shall be *ex officio* a justice of the peace in and for the city and liberties, and shall receive a salary of not less than £250 per annum, payable quarterly out of the city funds. But no recorder to be appointed until after a communication from the corporation of such city to the Governor General through the Provincial Secretary, that such an officer was required. § 105. The offices of recorder and police magistrate may, upon the suggestion of the corporation, be united in the same person; and in such case, the person holding such offices shall not be entitled to any other salary than provided for the office of recorder.

### REGISTRY OFFICE.

By the 9 Vic. c. 34, all former acts are repealed; § 2, without affecting the validity of proceedings under the same. § 3. A registry office to be kept in each county in Upper Canada. Appointments thereto to be under the great seal of the province. § 4. Registrar to be resident and keep an office at the place named in the commission. § 5. May appoint a deputy. § 6. After the confirmation of lands to any person by grant from the crown, a memorial of all deeds and conveyances, and of all wills and devises, whereby any lands may be in anywise affected in law or equity may, at the election of the party concerned, be registered as hereinafter directed; and every deed and conveyance that shall at any time after any memorial is so registered be made and executed, of the lands comprised in any such memorial, shall be adjudged fraudulent and void against any subsequent purchaser, or mortgagee for valuable consid-

ration, unless such memorial be registered, as by this act directed before the registering of the memorial of the deed under which such subsequent purchaser or mortgagee shall claim; and every devise by will, of lands mentioned in any memorial registered as aforesaid, after the registering of such memorial, shall be adjudged fraudulent and void against a subsequent purchaser or mortgagee for valuable consideration, unless a memorial of such will be registered in manner hereinafter directed; and a memorial of any further mortgage (legal or equitable) to a first mortgagee, shall, in like manner, be registered before it can prevail against a second mortgagee.

§ 7. Every memorial shall be in writing, and in case of deeds, shall be under the hand and seal of some, or one of the grantors or grantees, his or their heirs, executors or administrators, guardians or trustees, attested by *two* witnesses, *one* whereof to be one of the witnesses to the deed; which witness shall upon oath (except as otherwise provided) before the registrar or his deputy, or before any justice of the Court of Queen's Bench, District Court, or any commissioner of the Queen's Bench, prove the signing and sealing of such memorial, and the execution of the deed; and in case of wills, the memorial shall be under the hand and seal of some or one of the devisees, his or their heirs, executors or administrators, guardians or trustees, attested by *two* witnesses, *one* whereof shall, upon oath, before either of the parties aforesaid, prove the signing and sealing of such memorial and certificate thereof to be endorsed. § 8. Every memorial shall contain the day of the month and the year when such deed or will bears date, and the names and additions of all the parties to such deed or will, or the deviser or testatrix of such will (as mentioned or set forth in such deed or will), and of all the witnesses to such deed or will, and the places of their abode, and shall contain the lands contained in such deed or will, and the names of all the townships or parishes within the county where any such lands are lying, that are given, granted, or any way affected by such deed or will, in such manner as the same are mentioned in such deed or will, or to the same effect; and such deed or will (or probate of the same) shall be produced to the register or his deputy at the time of entering such memorial, who shall endorse a certificate on every deed, will or probate, and therein mention the day, hour, and time on which such memorial is entered and registered; expressing also in what book, page and number, the same is entered; and the registrar or his deputy shall sign the said certificate when so endorsed, which certificate shall be taken and allowed as *evidence* in all courts of record. § 9. Memorials of any deeds, wills or pro-

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bate in Upper Canada, may be registered on production of an affidavit, sworn before one of the judges of the Queen's Bench or a judge of any district court, or a commissioner of the Queen's Bench, wherein one of the witnesses to the deed shall swear to the execution of the same, and the place where executed. § 10. Memorials of any such deed or will executed or published without the limits of Upper Canada, shall be registered upon production to the registrar of an affidavit (or declaration in writing, in cases where by law a declaration is substituted for an affidavit), sworn before the mayor or chief magistrate, of any city, borough or town, corporate in Great Britain or Ireland, under the common seal of such city, &c., or before the Chief Justice or judge of any Court of Queen's Bench in Lower Canada, or of the supreme court of any colony of Great Britain; or before the mayor of any city, borough, or town corporate, in any foreign country; or any consul or vice-consul of her Majesty resident therein, wherein one of the witnesses to the deed or will shall have sworn to the execution of the same as hereinbefore provided, and the place where executed; and in case of wills, one of the witnesses thereto shall have sworn to the making and publishing of said will: but no such memorial shall be registered unless the deed, conveyance, will or probate, to which such memorial shall relate, shall be identified as that referred to in such affidavit, by a certificate thereof under the hand of such judge or commissioner, &c., before whom taken, to be endorsed on such deed, &c. § 11. In case of the death or residence abroad of the witness to any deed or will, proof may be made by the grantee, &c., before the justices in general quarter sessions in any district, of the execution of such instrument, and upon a certificate signed by the chairman and witnessed by the clerk of the peace, that the majority of the magistrates assembled were satisfied therewith, such deed or instrument may be recorded. § 12. Wills or probate recorded within twelve months after the death of the testator, to be valid and effectual against subsequent purchasers. § 13. Judgments at law may be registered, and bind lands in the same way as judgments *doctum* in England. § 14. Deeds of bargain and sale to be valid without enrolment. § 15. Registry office to be open from ten in the forenoon until three in the afternoon, for the disposal of business. § 16. Registers' fees as follows: For recording every deed or instrument not exceeding 100 words, 2s. 6d., and at the rate of one shilling for every extra 100 words; and the like fees for every certificate (except the certificate in the margin of the registry books), and for every search 1s. 6d.; and the like fees for every 100 words on registering judgments,

as on deeds: Provided that in no case shall a *general* search into the title to any particular lot exceed 10s. § 17. Any person forging any certificate under this act or any affidavit, or any memorial, shall be liable to the pains and penalties of the 5 *Eliz.* c. 14. § 18. This act not to extend to leases for 21 years in possession. § 19. Fire proof offices and vaults to be kept. § 20. Registrar removing from the county or becoming incapable, to be removed from office. § 21. Any registrar guilty of any undue or fraudulent practice to forfeit office, and liable to pay *treble* damages with full costs of suit. § 22. Secretary of the province to provide register book for each township, reputed township, city and town. § 23. When any registered judgment or mortgage is satisfied the registrar or his deputy, on receiving a certificate in form A. in respect to mortgages duly proved by the oath of a subscribing witness, in the same manner as hereinbefore provided for the proof of deeds, from the person entitled to such mortgage, or the attorney of such person; and in case of judgments, on receiving a *satisfaction piece* under the seal of the court, shall write the word "discharged," and affix his name in the margin of the register, which shall be deemed a discharge thereof. § 24. Such certificates when registered shall operate as a release of such mortgage and re-conveyance of the mortgaged premises. § 25. Registrar to take an oath of office. § 26. Deputies to be also sworn. § 27. Not compellable to register any deed till fees paid. § 28. Recognizance to be void at the end of twelve months after death or surrender of office, in case of no misbehaviour. § 29. Seal of a corporation to be sufficient evidence to justify registration. § 30. Governor may remove the registry office to the chief town. § 31. Surveyor-general to furnish registrar with a list of all persons to whom patents have issued within their counties, and with plans or maps of towns and townships, within twelve calendar months after application by any registrar. § 32. Provision in case of division of counties. § 33. Where a corporation or company shall sub-divide any land into town lots, it shall be lawful for such company to lodge a plan or map of the same in the registry office. § 34. Certain counties united for the purposes of registration. § 35. Interpretation clause.

#### Schedule A. (Form 1000)

To the Registrar of the County of —.

I, A. B. of —, do certify that C. D. of —, hath satisfied all money due upon a certain mortgage, made by the said C. D. to me, bearing date the — day of —, one thousand eight hundred and —, and registered at — of the clock in the forenoon, of the —

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day of ——— following, and that such mortgage is therefore discharged.  
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E. F. of ———, }  
G. H. of ———, } Witnesses. (Signed) A. B.

By 10 & 11 Vic. c. 16, doubts entertained respecting the meaning of § 24 of last recited act referred to and explained.

By 12 Vic. c. 35, § 42, the original owner of lands forming the site of any town or village mentioned in the next preceding section, or his agent, is required to deposit in the registry office a correct plan or map thereof, certified by some land surveyor, and by the original owner or his legal representative, within one year after the passing of this act, under the penalty of £2 10s., and the like sum every year after, for such neglect; to be collected and applied in like manner as penalties under 8 Vic. c. 58. § 43. The registrar is required to record the same, charging the same fees as in respect of any other document; and to keep a separate book for registering title deeds of lands situate in such town or village.

By 12 Vic. c. 77, § 2, proof of the execution of any deed, will or probate, or memorial of the same, in Lower Canada, may be made before any of the commissioners to be appointed under this act, and registrars of counties are required to register the same accordingly.

By 13 & 14 Vic. c. 63, § 2, a judgment entered up against any person in any court of record in Upper Canada, after the 1st January 1851, shall operate as a *charge* on defendant's lands within the county where such certificate shall be duly registered, and for any estate or interest whatever at law or in equity therein. § 3. After the first of January 1851, every deed, devise or other conveyance from any original grantee of the crown, shall be adjudged fraudulent and void against any subsequent purchaser or judgment-creditor who shall have registered his judgment, unless such deed, devise or conveyance, be registered before such subsequent deed, &c. § 3. The registry of any deed, &c. shall in *equity* constitute *notice* thereof.

## RELIGION.

The christian religion, according to high authority, is part and parcel of the law of England. To reproach or blaspheme it, therefore, is to speak in subversion of the law; and to say that religion is a cheat, manifests plainly a wish and endeavor to dissolve all those obligations whereby civil society is preserved, and is held to be an indictable offence at common law. — *R. v. Taylor*, *vintr.* 293; 3 *Keb.* 607. By 1 *Edw. VI. c. 1*, and 1 *Eliz. c. 1*, it is enacted, that whosoever shall revile the sacrament of the Lord's supper, shall be punished by fine and

imprisonment. And by 1 Eliz. c. 2, § 4, if any minister shall speak anything in derogation of the book of common prayer, he shall be liable to heavy penalties. Also by § 9 of the last stat., if any person shall, in plays, songs, or other open words, speak anything in derogation, depraving or despising of said book; or shall forcibly prevent the reading of it by any clergyman, or compel or cause him to read any other service in its stead, the offender shall for the first offence forfeit 100 marks; for the second, 400; and for the third, all his goods and chattels, and moreover be liable to imprisonment for life. And by 3 Jac. 1 c. 21, if any person shall use the name of the Holy Trinity profanely or jestingly in any stage plays, interlude, or show, he shall be liable to a *qui tam* penalty of £10. By 9 & 10 W. III. c. 32, it is enacted, that if any person educated in, or having made profession of the Christian religion, shall by writing, printing, teaching or advised speaking, deny the Christian religion to be true, or the holy scriptures to be of divine authority, he shall, for the first offence, be rendered incapable to hold any office or place of trust; and for the second, be rendered incapable of bringing any action; being guardian, executor, legatee or purchaser of lands; and shall suffer three years' imprisonment without bail. But if within four months after the first conviction, the offender appear in open court and publicly renounce his error, he shall be discharged that once from all disabilities. The provisions of this statute have been held to be cumulative, and therefore do not prevent the offender from being indicted at common law.—*R. v. Carlisle*, 3 B. & A. 171. By 14 G. III. c. 83, § 5, it is enacted, that his Majesty's subjects professing the religion of the Church of Rome of and in the province of Quebec, may enjoy the free exercise of their said religion, subject to the King's supremacy, declared and established by the 1 Eliz. over all the dominions and countries belonging to the imperial crown of this realm: and that the clergy of the said church may hold, receive, and enjoy, their accustomed dues and rights, with respect to such persons only as should profess the said religion. And by § 7, the following oath shall be taken by persons professing the said religion in place of the oath required by the stat. of Eliz. or any other oaths substituted by any other act in place thereof.

I, A. B., do sincerely promise and swear, that I will be faithful and bear true allegiance to his Majesty King George, and him will defend to the utmost of my power against all traitorous conspiracies and attempts whatsoever which shall be made against his person, crown, and dignity, and I will do my utmost endeavor to disclose and make known to his Majesty, his heirs and successors, all treasons and traitorous conspiracies and attempts which I shall know to be against him or any of them; and

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all this do I swear without any equivocation, mental evasion, or secret reservation, and renouncing all pardons and dispensations from any power or person whomsoever to the contrary, so help me God."

And every such person refusing to take the said oath shall incur the pains and penalties, forfeitures, disabilities, and incapacibilities of the 1st of Eliz. \*By 31 G. III. c. 31, § 36, it is enacted, that in all future grants of land from the Crown there shall be a specification of lands of the like quality in value to one-seventh for the support of a protestant clergy. And by \*1 W. IV. c. 28, after noticing that doubts had been suggested that the tythe of the produce of land might still be legally demanded by the incumbent, it is enacted, that no tythes shall be claimed, demanded, or received by any ecclesiastical parson, rector, or vicar, of the protestant church within this province.

### RELIGIOUS SOCIETIES.

\*By the 9 Geo. IV. c. 2, § 1, after reciting, whereas various religious societies of various denominations of Christians find difficulty in securing the title of land requisite for the site of a church, meeting-house, or chapel, or burying ground, for want of a corporate capacity to take and hold the same in perpetual succession; and whereas it is expedient to provide some safe and adequate relief in such cases, it is enacted, that whenever any religious congregation or society of Presbyterians, Lutherans, Calvinists, Methodists, Congregationalists, Independents, Anabaptists, Quakers, Menonists, Tunkers, or Moravians, shall have an occasion to take a conveyance of land for any of the uses aforesaid, it shall and may be lawful for them to appoint trustees, to whom and their successors, to be appointed in such manner as shall be specified in the deed, the land requisite for all or any of the purposes aforesaid may be conveyed; and such trustees and their successors, in perpetual succession, by the name expressed in such deed, shall be capable of taking, holding and possessing such land, and of commencing and maintaining any action or actions in law or equity for the protection thereof, and of their right thereto. § 2. The land to be so held not to exceed five acres for any one congregation. § 3. And such trustees shall, within twelve months after the execution of such deed, cause the same to be registered in the office of the registrar of the county in which the land lies. § 4. And all conveyances made before the passing of this act, for any of the purposes aforesaid, shall be valid; provided such conveyance shall have been already registered, or shall be registered within twelve months after the passing of this act.

By 4 & 5 Vic. c. 73, reciting whereas it is expedient to allow

the several Christian denominations recognised by the statutes of this province to hold lands for the support of public worship and the propagation of Christian knowledge, it is enacted, that so much of the 9 G. IV. c. 2, as limits the powers of the several denominations mentioned in the said act, to the quantity of five acres, and to the purposes for which lands shall be held, shall be repealed. § 2. The several religious societies mentioned in said recited act shall and are hereby authorised to hold lands in the manner specified in said act, for the support of public worship and the propagation of Christian knowledge, as well as for the purposes mentioned in said act, anything in the statutes of *Mortmain* to the contrary notwithstanding. § 3. The rights and privileges aforesaid to extend also to the Roman Catholic church.

By 8 Vic. c. 15, § 1, it is enacted that whenever any religious society or congregation of Christians in Upper Canada shall have occasion to take a conveyance of land, for the site of a church, chapel, meeting-house, burial-ground, and residence for their minister, it shall be lawful for them to appoint trustees, to whom and to whose successors, to be appointed in such manner as shall be specified in the deed of conveyance, the land requisite for any of the purposes aforesaid may be conveyed; and such trustees and their successors in perpetual succession shall be capable of taking, holding and possessing such land, and of commencing, maintaining and defending actions for the protection thereof, the statutes of mortmain or any other law to the contrary notwithstanding. § 2. Provided that such trustees shall within twelve months after the execution of such deed, cause the same to be registered.

And by 12 Vic. c. 91, it is enacted that all deeds heretofore executed for any of the purposes of either of said acts, (9 G. IV. c. 2, 8 Vic. c. 15), shall be valid if registered within twelve months after the passing of this act, except in case of prior registrations which are not to be affected. § 2. Trustees of any of the religious societies or congregations to which said acts are applicable, are authorised from time to time, upon the express consent of the conference, synod or body having the direction of the temporal affairs thereof, by deed under their hand and seal of office (which seal each body of trustees is hereby empowered to have and make, and from time to time to alter) to lease, mortgage, sell and convey, or exchange such of the lands held by them, in such portions, and in such manner as from time to time may be deemed necessary; and the trustees' receipt for the purchase money shall be an absolute discharge to the purchaser: Provided that the monies arising from such sale or mortgage be applied to the purchase of other

lands to be held by the trustees for like purposes, or improvement of the same or other lands held by them upon the like trusts; and provided that no land acquired by free gift shall be sold without the consent of the grantor or his representatives.

And by 12 Vic. c. 92, entitled "an act to enable the trustees of churches and parsonages, and other trusts, belonging to the Wesleyan Methodist Church in Canada, more conveniently to manage and dispose of their estates, and for other purposes therein mentioned"; it is also enacted that it shall be lawful for the trustees for the time being, of each of the religious congregations of the Wesleyan Methodist Church in Canada, and the said trustees of each respective congregation are as such trustees thereby authorised from time to time, upon the express consent of the Conference of the said Wesleyan Methodist Church first had therefore by deed under their hand and seal of office, (which seal each body of trustees is thereby empowered to have and make, and from time to time to alter) to lease, mortgage, sell, convey or exchange, such of the lands and tenements held, or to be held by any of the respective trustees, in such portions and in such manner as from time to time may be deemed by the trustees thereof necessary and useful, for the purposes connected with the particular trust, subject nevertheless to the consent of the Conference aforesaid; and the receipt of the trustees shall be an absolute discharge to the purchaser: *Provided always*, that the monies arising from the sale or mortgage of lands so acquired, shall be applied by the trustees to the purchase of other lands, to be held by them for the like purposes and trusts, or to the improvement of the same or other lands held by them upon the like trusts; and *provided* that no lands acquired by the trustees by *free gift* for special purposes, shall be sold by the trustees without the consent of the grantor or his legal representatives.

#### RELIGIOUS TRACTS, &c.

By 13 & 14 Vic. c. 7, it is enacted that notwithstanding anything in the 56 G. III. c. 34, (for which see title "Hawkers and Pedlars," *ante* p. 342), or in any other act or law relating to hawkers or pedlars, nothing in the said act shall render it necessary for persons in the employ of any temperance, benevolent or religious society in this province, to take out licenses as hawkers or pedlars, in order to enable them lawfully to sell and peddle temperance tracts, and other moral and religious publications under the direction of such society.

#### REPLEVIN.

\* By statute 4 W. IV. c. 7, entitled "an act to facilitate the

remedy by replevin," it is enacted by § 1, that any person complaining of a wrongful distress in any case in which by the law of England replevin will lie, may, on filing a præcipe, obtain from the office of the clerk of the crown and pleas, or from any of his deputies, a writ of replevin, in the form marked A. § 2. Before the sheriff shall proceed to replevy upon any such writ, he shall take pledges from the plaintiff according to the law of England, and the bond may be given in the form marked B., and the assignment thereof according to the form in the schedule. § 3. Upon the sheriff making return of the goods distrained having been eloigned, as would warrant the issuing of a *capias in withernam* by the law of England, such writ shall issue upon filing such return from the clerk of the crown and pleas, or his deputies, which writ may be in the form marked C.; and before executing such writ the sheriff shall take pledges according to the law of England. § 4. The sheriff may make his warrant to any bailiff or bailiffs, jointly or severally. § 5. After appearance by the defendant, the plaintiff may declare in replevin according to the law of England. § 6. If the defendant shall not appear within eight days after the return of the writ, the plaintiff shall cause a notice to be affixed to the door of the court house of the district in which such writ shall have issued, according to the form marked D.; and if the defendant shall not appear at the expiration of twenty-one days, the plaintiff, upon filing an affidavit of the due publication of such notice, may enter an appearance for the defendant, and proceed as if the defendant had appeared. § 7. When the value of the goods distrained shall not exceed £15, and the title to lands shall not be in question, the writ of replevin may issue from the district court, and such proceedings may be had thereon agreeable to the practice of the King's Bench. § 8. The Court of King's Bench may from time to time regulate the mode of practice in replevin, and modify or alter any of the forms in the act. § 9. In the absence of any provision in this act, or in any rule of the Court of King's Bench to the contrary, the practice in England in cases of replevin shall be pursued so far as practicable.

(For the forms and schedule, see the act.)

### RESCUE

Is defined by 4 *Bl. Com. c. 10*, to be the forcibly and knowingly freeing another from arrest and imprisonment; and it is generally the same offence in a stranger so rescuing as it would have been in a gaoler voluntarily suffering an escape; but here, as upon voluntary escapes, the principal must be first attainted or receive judgment before the rescuer can be punished; for by

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possibility there may have been no offence committed.—1 *Hale's P. C.* 607; nevertheless as the rescue is in contempt of some legal process, the offender may be committed and punished for a misdemeanor, according to the degree of his offence. To hinder a person who has committed felony from being arrested is a misdemeanor only; but if rescued after the arrest, and the arrest was for felony, the rescuer is a felon; if for treason, a traitor; and if for a trespass, finable.—*Hale Pl.* 116; 3 *Haw. c.* 21; *Russ. & Ry. C. C. R.* 458; but it seems necessary that the rescuer should have knowledge of the criminal offence, if the party be in custody of a private person, but not necessary if in custody of an officer.—2 *Hale*, 606.

## Commitment for a Rescue.

County of —, } To the constable of —, and to the keeper of the  
to wit. } common gaol at —, in the said county:

Whereas A. B. of —, yeoman, and C. D. of —, labourer, are this day brought before me, J. C., esquire, one of her Majesty's justices of the peace in and for the county of —, and charged on the oaths of E. F. and G. H., constables of —, with having this day at —, in the county aforesaid, unlawfully, riotously and against the Queen's peace, rescued and set at large one J. K., committed to the custody of them the said constables, to be conveyed to the common gaol of —, for a felony, by virtue of a warrant under the hand and seal of me, the said justice, bearing date the — day of —, instant. These are therefore to command you, the said constable, forthwith to convey and deliver into the custody of the keeper of the said gaol the bodies of them the said A. B. and C. D., together with this my warrant. And also to command you the said keeper to receive the said A. B. and C. D. into your custody in the said gaol, and them there safely to keep until they shall be discharged therefrom by due course of law. Given under my hand and seal, &c.

## RESTITUTION OF STOLEN GOODS.

By the common law there was no *restitution of stolen goods*, but it being considered that the party prosecuting the offender by indictment deserved to have his goods restored, it was enacted by the stat. 21 H. VIII. c. 11, that if any felon do rob or take away any man's money or goods, and thereof be indicted and arraigned and found guilty, or otherwise attainted by reason of evidence given by the party robbed or owner of the money or goods, or by any other, by their procurement; then the party robbed, or owner of the goods, shall be restored to such his money or goods; and the justices may award a writ of restitution.

The writ of restitution has fallen into disuse; but upon production of the goods at the trial, the court will order them to be restored to the owner; and if not restored, he may maintain an action of trover for them, after conviction, notwithstanding



they have been sold to the person claiming in *market overt*.—1 *Hale*, 543; 6 *Kel.* 48; 2 *Inst.* 714. Although this may seem hard upon the buyer, yet the rule of law is that "*spoliatus debet ante omnia restitui*," especially when he has used all diligence in his power to convict the felon; and as the case is reduced to this hard necessity, that either the owner or the buyer must suffer, the law prefers the right of the owner who has done a meritorious act by pursuing a felon to condign punishment, to the right of the buyer, whose merit is only negative, that he has been guilty of no unfair transaction.—4 *Bl. Com.* 363. However, by 31 *Eliz. c. 12*, where a horse is stolen and sold in open market, according to the provisions of the act, the owner can only be entitled to it again upon payment of the buyer's costs.

See further on this subject, *ante* title "Horses," p. 360.

If the thief sell the goods and be taken with the money which he sold them for, and the goods cannot be heard of, it has been questioned whether the prosecutor shall have the money.—*W. Jones*, 148; 2 *East. P. C.* 789. But the better opinion seems to be where it is clearly ascertained that the money is the produce of the goods stolen, that the prosecutor would be then entitled to it, within the equity of the above statute.—*Hamberrie's case*, *Cro. Eliz.* 661; *Harris's case*, *Noy*, 128; 1 *Hale*, 542; 2 *East. P. C.* 789.

Restitution, however, can only be had from the person in possession of the goods at the time of, or after the felon's attainder. Therefore, if a party purchase them bona fide, in *market overt*, and sell them again before conviction, no action will in this case lie against him for the value, though notice were even given him not to sell.—*Horwood v. Smith*, 2 *R.* 753. But the necessity of prosecuting and convicting or attainting the felon, in order to have restitution, is only when the property is changed by some intermediate act, as when they have been sold in *market overt*. For otherwise the owner may, at common law, peaceably retake his goods wherever he finds them, without any writ of restitution.—*Kel.* 48; 2 *Haw. c.* 25. And now by 4 & 5 *Vic. § 49*, restitution shall be made, except in certain cases, for which see title "Larceny," p. 446.

### RIOT, ROUT, &c.

A riot is the forcibly doing an unlawful thing by three or more persons assembled together for that purpose. By the common law, peace officers may suppress a riot, and may command all other persons to assist them.—1 *Haw. c.* 66, § 11. A *rout* is where three or more meet together to do some unlawful act upon a common quarrel, as forcibly breaking down fences upon a right claimed of common way, and

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making some advances towards it, but without actually executing it.—*Ibid.* An unlawful assembly is where three or more assemble themselves together, with intent to do an unlawful act, as to pull down enclosures, &c., but part without doing it, or making any motion towards it.—*Ibid.* A riot at common law is a misdemeanor only, punishable by fine and imprisonment.—1 *Haw. c.* 65, § 12. But under particular circumstances, which will be seen hereafter, it is in some cases, by statute, made felony.

*Riot at Common Law (Misdemeanor).*

If the riotous assembly meet for a public purpose;—as to redress a general grievance; to pull down *all* enclosures; or to reform religion; or with a determination to resist the King's forces, if legally called in to keep the peace;—their proceedings then may amount to overt acts of high treason, by levying war against the King.—4 *Bl. Com.* 147.

To constitute a riot, there must be some circumstances of actual force or violence, or at least of an apparent tendency thereto, which are calculated to strike terror among the people, such as the show of offensive weapons, threatening speeches, or turbulent gestures. But it is not necessary that personal violence should have been actually committed.—1 *Haw. c.* 65, § 5; *Clifford & Brandon*, 2 *Camp.* 369. Nor will it amount to a riot if the object is to do a lawful act, as to remove a nuisance.—1 *Haw. c.* 65, § 8; *R. v. Soley*, 11 *Mod.* 117; 5 *Burn's J. Riot*, § 1. Where a person on seeing others actually engaged in a riot joins himself to them and assists them, he is as much a rioter as if he had at first assembled with them for the same purpose.—1 *Haw. c.* 65, § 9. And whoever encourages, or promotes, or takes part in a riot, whether by words, signs or gestures, or by wearing the badge, or ensign of the rioters, is himself to be considered a rioter; for in this case, all are principals.—2 *Camp.* 370; 4 *Burr.* 2073; 1 *Hale*, 463.

To incite persons to assemble in a riotous manner, appears to be an indictable offence.—*Cro. Cir. Comp.* 420; 8 *Ed. II. Chit. C. L.* 508. Women are punishable as rioters; but *infants*, under the age of discretion, are not.—1 *Haw. c.* 5, 65, § 14. Where an infant is indictable, he may appear by attorney.—*R. v. Turner*, 2 *Ld. R.* 1284.

Thus much for a riot at Common Law.

*Riot by Statute (Felony).*

The statute 1 *G. I. st.* 2, c. 5, § 1, commonly called the *Riot Act*, enacts that if any persons to the number of twelve or more, being unlawfully, riotously and tumultuously assembled together, to the disturbance of the public peace; and being required

or commanded by any justice of the peace, or the sheriff of the county, or his under-sheriff, or by the mayor, bailiff, or other head officer, or justice of the peace of any city or town corporate, where such assembly shall be, by proclamation made in the Queen's name (in the form directed by the second section of the act) to disperse themselves, and peaceably to depart to their habitations or to their lawful business, shall, to the number of twelve or more (notwithstanding such proclamation made), unlawfully, riotously and tumultuously, remain or continue together by the space of one hour after such command or request made by proclamation, the parties so remaining shall be guilty of felony, and suffer death. By § 2, the justice (or person authorised as above), shall, among the said rioters, or as near to them as he can lawfully come, with a loud voice command, or cause to be commanded, silence to be, while proclamation is making; and after that, shall openly and with a loud voice make, or cause to be made, proclamation, in these words, or like in effect:—

Our sovereign lord the King (a) chargeth and commandeth all persons being assembled to disperse themselves, and peaceably to depart to their habitations or to their lawful business, upon the pains contained in the act made in the first year of the reign of King George, for preventing tumults and riotous assemblies. God save the King.

By § 3, those assembled, and not dispersing within an hour, may be seized; and if they make resistance, the persons killing them shall be indemnified. § 4. And if any persons unlawfully, riotously, and tumultuously assembled, shall unlawfully and with force, demolish or pull down, or *begin* to demolish or pull down, any church, chapel, or any building for religious worship, certified and registered according to the statute of the 1 W. & M. or any dwelling house, barn, stable, or other out-house, they shall suffer death, without benefit of clergy. § 5. And if any person shall, with force and arms, wilfully oppose, hinder, or hurt any person that shall begin or go to make the proclamation, whereby the same shall not be made, he shall be guilty of felony; and also every person so unlawfully, riotously, and tumultuously assembled, to the number of *twelve* or more, to whom proclamation should or ought to have been made, if the same had not been hindered, shall likewise, in case they, or any of them, to the number of twelve or more, shall continue together, and not disperse themselves within one hour after such let or hinderance so made, shall be guilty of felony. § 8. Prosecutions under this act must be commenced within twelve months.

\*By 3 W. IV. c. 4, (the Riot Act,) 1 G. I., is confirmed in its

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relation to this province; and it is enacted, that the provisions in the fourth clause of the same act shall apply and extend to all churches and chapels or places for religious worship in this province, notwithstanding the same, or any of them, shall not be *certified or registered* as provided in the said act.

By 4 & 5 V. c. 26, § 6, if any persons riotously and tumultuously assembled together to the disturbance of the public peace, shall unlawfully and with force demolish, pull down, or destroy, or begin to demolish, pull down, or destroy, any church, chapel, or meeting-house, for the exercise of any mode or form of religious worship, or any house, stable, coach-house, out-house, warehouse, office, shop, mill, malt-house, hop oast, barn, or granary, or any building or erection used in carrying on any trade or manufacture, or any branch thereof, or any machinery whether fixed or moveable, prepared for or employed in any manufacture, or in any branch thereof, shall be liable, at the discretion of the court, to be imprisoned at hard labour in the Provincial Penitentiary for the term of his natural life, or for any term not less than seven years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years.

*Indictment for a Riot and Assault. (Archbold.)*

County of —, } The jurors for our lady the Queen, upon their oath  
to wit. } present, that J. S., late of the township of —,  
in the county of —, labourer, J. R., late of the same, carpenter, E.  
W., late of the same, yeoman, together with divers other evil disposed  
persons, to the number of —, and now to the jurors aforesaid  
unknown, on the — day of —, in the — year of the reign of  
our sovereign lady Victoria, with force and arms, at the township aforesaid, in the county aforesaid, unlawfully, riotously and routously did assemble and gather together, to disturb the peace of our said lady the Queen, and being so then and there assembled and gathered together, in and upon one A. the wife of J. N., in the peace of God and of our lady the Queen, then and there being, unlawfully, riotously and routously did make an assault, and her the said A. then and there unlawfully, riotously and routously did beat, wound and ill-treat, so that her life was greatly despaired of, and other wrongs to the said A. then and there unlawfully, riotously and routously did: in contempt of our said lady the Queen and her laws, to the evil example of all others in the like case offending, and against the peace of our lady the Queen, her crown and dignity.—(Add also another count for a common assault.)

*Indictment for a Riot and Tumult.*

[Commencement as in the last form, &c.] with force and arms, to wit, with sticks, staves and other offensive weapons, at the township aforesaid, in the county aforesaid, unlawfully, riotously, and routously did assemble and gather together, to disturb the peace of our said lady

the Queen; and being so assembled and gathered together, armed as last aforesaid, did then and there unlawfully, riotously, and routously make a great noise, riot and disturbance, and did then and there remain and continue armed as last aforesaid, making such noise, riot and disturbance for the space of an hour and more, then next following, to the great disturbance and terror, not only of the liege subjects of our lady the Queen there being and residing, but of all other the liege subjects of our said lady the Queen then passing and repassing in and along the Queen's common highway there, in contempt of our said lady the Queen and her laws, to the evil example of all others in the like case offending, and against the peace of our lady the Queen, her crown and dignity.

*Commitment for a Riot and feloniously beginning to demolish a House.*

County of —, }  
to wit. } To the keeper of —.

Receive into your custody the body of E. F., herewith sent you, brought before me J. C., Esq., one of her Majesty's justices of the peace for the county of —, and charged by A. B. before me the said justice, upon oath, with unlawfully, riotously, tumultuously, and feloniously assembling, with divers other persons, to the disturbance of the public peace, at —, in the said county, on — the — day of — 18—, and with force and arms beginning to demolish and pull down a certain dwelling-house there situate, belonging to A. B. esquire, contrary to the statute, &c.

*The like for Rioters remaining an hour together after the Riot Act has been read. (Archbold.)*

*Commencement as before*, on the — day of —, in the year of our Lord 18—, at —, in the said county, together with divers other evil disposed persons, unlawfully, riotously and routously did assemble and gather together; and notwithstanding proclamation made in that behalf by one of her Majesty's justices of the peace for the said county, commanding them and requiring them to disperse themselves, and peaceably to depart to their habitations, or to their lawful business, the said A. B., C. D. and E. F., together with other persons, to the number of twelve and more, feloniously, riotously, and tumultuously did remain and continue together by the space of one hour after such command as made by the said proclamation as aforesaid. And you the said keeper, &c.

### RIVERS AND NAVIGATION.

A navigable river is, with respect to the right of the public to pass along it for the conveyance of themselves or their goods and merchandizes, in the nature of a public highway.—1 *Haw. c. 76, § 1*; 3 *Can. Dig. 23*. A nuisance occasioned to a public river by obstruction, is indictable on the same principle as a similar nuisance to a highway. Thus, the *laying of timbers* in a public river, whereby the passage of vessels is obstructed, is as much a nuisance as *laying logs* in a highway.—5 *Bac. Ab. nuisance. (A.)*

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By the 10 & 11 Vic. c. 20, any person who shall throw into any river, rivulet or watercourse, or any owner or occupier of a mill who shall suffer or permit to be thrown, any slabs, bark, waste stuff, or refuse of any saw-mill, (except saw-dust) or any stumps, roots, shrubs, tan-bark or waste-wood, timber or leached ashes; or any person who shall fell, or cause to be felled in or across any river, rivulet or watercourse, any timber, or growing or standing tree or trees, and shall allow the same to remain, shall thereby incur a penalty not exceeding £5, nor less than 1s. every day such obstruction shall remain; to be recovered with costs before any one or more justices, in the manner provided by the 4 & 5 Vic. c. 26. This act not to extend to any dam, river or bridge, or to any tree cut down or felled across any such river, &c., as a means of passage. This act to remain in force for four years from passing thereof (25th July, 1847); and until the end of the next session.

See also "*Banks of Rivers*," p. 93.

## ROBBERY.

Robbery signifies a larceny from the person, committed openly and violently; and may be defined to be, the felonious and forcible taking of goods or money of any value from the person of another, or in his presence, against his will, by violence, or putting him in fear.—4 *Bl. Com.* 243; 2 *East P. C.* 797.

### *Of the Felonious taking.*

The gist of the offence being the force and terror used by the offender, the value of the property stolen is quite immaterial; for a penny as well as a pound, forcibly taken or extorted, constitutes in law a robbery.—3 *Inst.* 69; 1 *Hale*, 532; 1 *Haw. c.* 34, § 16; 4 *Bl. Com.* 243. The taking also must be such as to give the robber a possession of the property stolen; therefore if a man, having his purse fastened to his girdle, be assaulted by a thief, and the thief, in order the more readily to take the purse, cut the girdle, and the purse thereby fall to the ground, this is no taking so as to amount to robbery, for the thief never had the purse in his possession; but, if he had taken it up from the ground, though but for one moment, and afterwards let it fall in the struggle, this would then have been a sufficient taking, the purse having been once in his possession.—3 *Inst.* 69. And when once the offence of robbery is completed it cannot be purged by a re-delivery. There may be a taking in law however, as well as a taking in fact, which will amount to robbery. Thus, if upon A. assaulting B. and bidding him deliver his purse, B. refuse to do so, and then A.



pray B. to give or lend him money, and B. does so accordingly under the influence of fear, the taking will be complete.—1 *Hale*, 533. So, when thieves finding no property on a man force him by menace of death to fetch them money, which he delivers to them while the fear of the menace continues upon him, and they receive it, this is a sufficient taking in law.—*Id.* 3 *Inst.* 68. The taking however need not be immediately from the person, it is enough if it be *in his presence*. Thus, if A. upon being attacked by a robber throws his purse or his cloak into a bush, or lets his hat fall while he is endeavouring to escape, and the thief takes either of these things up and carries it away, such a taking being done in the presence of A., will amount to robbery.—3 *Inst.* 68; 1 *Hale*, 533; 1 *Haw.* 34, § 6; but no stealing will amount to robbery unless done in the presence of the owner.—*R. v. Grey*, 2 *East. P. C.* 708.

#### *What Violence or Fear is necessary.*

The principle of robbery being violence, some degree of force is therefore necessary to constitute the offence; but there may be a constructive as well as an actual force, for where such *terror* is impressed on the mind as not to leave the party a free agent, and in order to get rid of that terror he delivers his money, this is a sufficient force in law; and where actual violence is used there need not be actual fear, for the law will presume it.—*Donally's case*, 2 *East. P. C.* 727. With respect to the degree of violence, where there is no putting in fear, the amount of force used in such cases must be something more than a sudden taking or snatching, for unless some greater force is used by the thief to overpower or prevent resistance, or there is some resistance or actual struggle on the part of the owner to retain his property, this will not amount to a robbery, being divested of both the main ingredients of the crime, *corporal violence and terror*.—*R. v. Macaulay*, 1 *Leach*, 387; *R. v. Baker*, *Id.* 290; *R. v. Robins*, *Id.* 290, (note A.); *R. v. Steward*, 2 *East. P. C.* 703; but if any injury be done to the person, or there is any struggle of the owner to retain his property, then it is robbery. As, where a lady's ear-ring was pulled so violently from her ear that the ear was torn through and made to bleed, and she was otherwise much hurt.—*R. v. Lupton*, 1 *Leach*, 320; and so, where the prisoner pulled the prosecutor's watch from his fob, which being fastened by a steel chain round his neck, the thief with two jerks broke the steel chain in order to get the watch, for the prisoner in this case had to overcome the resistance made by the steel chain, and used actual force for that purpose.—*R. v. Mason*, *R. & Ry.* 419. The violence used also will not the less amount to robbery, because it is

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accompanied by some specious pretence of law or justice ; thus, where the prosecutor was carrying his cheeses along the highway and was stopped by the prisoner, who insisted on seizing them for want of a permit, which was found to be a mere pretence, no permit being necessary, and on some altercation they agreed to go before a magistrate to determine the matter, when other persons, who were riotously assembled and in confederacy with the prisoner, carried away the goods in the absence of the prosecutor, this was held to be robbery, and the first seizure of the cart and goods by the prisoner was sufficient to constitute the offence.—*Merriman v. Hundred of Chippenham*, 2 East. P. C. 709. With respect to a constructive violence by *putting in fear*, it matters not whether the fear excited is of injury to the *person*, the *property* or the *character* of the party robbed ; as, if a person with a drawn sword or other circumstances of terror, indicating a felonious intent, beg alms of another, who gives it to him through mistrust and misapprehension, this pretence of asking charity will not prevent the offence from being considered as robbery.—4 Bl. Com. 244 ; 2 East. P. C. 711. The *degree* of fear need not be the extremest state of alarm and terror, but only such a reasonable apprehension of danger as may induce a man, for his own safety, to part with his property. So, where a man is compelled through fear to part with his money, in order to prevent his *house* or *property* from being burnt or destroyed, this will be a sufficient putting in fear to make the offence of those who take his money amount to the crime of robbery ; so, where a person is induced to part with his money through fear, upon the threat of another to accuse him of an unnatural offence or any other crime, whereby his character or reputation may be injured, extorting money under a threat of this description will amount to the crime of robbery, whether the party threatened has been guilty of the crime or not.—*R. v. Gardiner*, 1 C. & P. 79.

By 4 & 5 Vic. c. 25, § 6, whosoever shall rob any person, and at the time of or immediately before or immediately after such robbery shall stab, cut or wound any person, shall be guilty of felony, and being convicted thereof shall suffer death. § 9. Whosoever shall rob any person, or shall steal any chattel, money or valuable security from the person of another, shall be liable, at the discretion of the court, to be imprisoned at hard labour in the Provincial Penitentiary for any term not exceeding fourteen years nor less than seven years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years.

## Of Principals and Accessories.

With respect to persons aiding and abetting in a robbery, the

same rules are applicable as in every case of principal and accessory. Thus, where several persons come to rob a man, and they are all *present* whilst one of them takes his money, they are all guilty of robbery. So, if three persons come to commit a robbery, and one stand sentinel at the corner of a field, or watch if any one should approach, while the others commit the robbery, this will be a robbery in the third also, though he stood at a distance from them and not within view—1 *Hale*, 534, 537; but though several come out with a common design to rob in the highway, yet if one of the party (before any robbery takes place) entirely leaves them and goes another way, rendering them no manner of assistance, either at the time or after the commission of a robbery by the others, he cannot then be said to be guilty, either as principal or accessory.—*R. v. Hyde*, 1 *Hale*, 537.

See also *ante* title "Accessories."

#### *Of Assaults with intent to Rob.*

By 4 & 5 Vic. c. 25, § 7, whosoever shall, being armed with any offensive weapon or instrument, rob or assault with intent to rob any person, or shall rob any person, and at the time, or immediately before or immediately after such robbery, shall beat, strike, or use any other personal violence to any person, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be imprisoned at hard labour in the Provincial Penitentiary for the term of his natural life, or for any term not less than seven years, or be imprisoned in any other prison or place of confinement for any term not exceeding two years. § 10. Whosoever shall assault any person with intent to rob, shall be guilty of felony, and being convicted (save and except in cases where a greater punishment is provided by this act) be liable to be imprisoned for three years.

#### *Commitment for a Robbery. (Archbold.)*

*Commencement as ante p. 165.*) — on the — day of —, in the year of our Lord one thousand eight hundred and —, at — in the said county, in and upon the said C. D., feloniously did make an assault, and him the said C. D. in bodily fear and danger of his life feloniously did put, and ten pieces of the current gold coin of this province called sovereigns, and one gold watch, of the monies, goods and chattels of the said C. D. from the person and against the will of the said C. D. feloniously and violently did steal, take and carry away. And you the said keeper, &c. (as *ante p. 165.*)

#### *Commitment for an Assault with intent to rob. (Archbold.)*

*Commencement as ante p. 165.*) —, on the — day of —, in the year of our Lord one thousand eight hundred and —, at —, in the said county, in and upon the said C. D. feloniously did make an

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assault, with intent then and there the monies, goods and chattels of the said C. D. from the person and against the will of the said C. D. feloniously and violently to steal, take and carry away, against the form of the statute in that case made and provided. And you the said keeper, &c. (as *ante* p. 165.)

**SABBATH.**—(See “Lord’s Day,” *ante* p. 456.)

**SACRILEGE.**

**Sacrilege** (*sacrilegium*) is, at common law, the robbery of a church, or a felonious taking out of a holy place things consecrated to pious purposes; as the vessels, goods or ornaments of the church—3 *Cro.* 153; but to steal anything belonging to private persons in a church is *larceny*, and not sacrilege. Sacrilege was originally punished with greater severity than other robberies, by our law; for it denied the benefit of clergy to a person convicted of this offence, which was formerly granted to all other felons—2 *Inst.* 250; 23 H. VIII. c. 1, § 3; 1 Ed. VI. c. 12, § 10.

But now, by 4 & 5 Vic. c. 25, § 13, if any person shall break and enter any church or chapel, and steal therein any chattel, or having stolen any chattel, money or valuable security, in any church or chapel, shall break out of the same, such offender being convicted shall be liable to be imprisoned at hard labour in the Provincial Penitentiary for any term not less than seven years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years (a).

**SALMON.**

\* By 3 G. IV. c. 10, § 2, no salmon or salmon fry shall be taken or killed, from the 25th day of October to the 1st day of January (*repealed* by the \* 4 G. IV. c. 20). § 3. No person shall fish by torch-light within one hundred yards of any mill or dam. § 4. No salmon or salmon fry shall be taken in the Home district, district of Newcastle, and district of Gore, nearer the mouth of any river or creek along the shore of Lake Ontario, than two hundred yards, or within fifty yards up the mouth of any such river or creek, except the Credit, in the Home district, and there not within two hundred yards up the mouth of the said river. § 5. None to be taken by nets or weirs in any of the creeks and rivers in said districts. § 6. Any person convicted of any offence under this act before two or more justices, by oath of one or more witnesses other than the informer, shall forfeit and pay not less than 5s. nor more than £6 for every offence, with reasonable costs, and in default

of payment be committed to the common gaol for not less than two days, nor more than thirty days, unless the same shall be paid. § 6. One moiety of the fines shall be paid to the informer and the other to the province. § 8. This act shall not extend to any other part of the Gore district, than is comprised within the township of Trafalgar, and that part of the township of Nelson which lies north of the beach, between Burlington Bay and Lake Ontario; and shall not prevent Indians fishing as heretofore, except within one hundred yards of a mill or mill-dam, by fire or torch-light.

\* 2 G. IV. c. 20, the 2nd § of \* 2 G. IV. c. 10, is repealed, and it is enacted, that it shall not be lawful to take any salmon or salmon fry, from the 10th of November till the 1st of January. § 2 extends the provisions of \* 2 G. IV. to the whole of the river Trent. § 4 prohibits the buying of any salmon from the Indians, within the period prohibited, under the same penalty as any person shall be subject to for infringing the provisions of said act 2 G. IV. § 5. One half of any fines under this act shall be paid to the informer and the other half to the use of the province.

By 8 V. c. 47, § 1, the 2 G. IV. c. 10, and 5 G. IV. c. 20, are repealed. § 2. It shall not be lawful for any person at any time between the 10th September and the 1st March in any year, to take, catch, or kill any salmon or salmon fry; nor at any time to take, catch, or kill any salmon or salmon fry nearer the mouth of any river or creek emptying into Lake Ontario or the Bay of Quinte than 200 yards, or within 200 yards up from the mouth of any such river or creek. But this act is not to prevent the taking of salmon with a seine or net at any place along the shore of Lake Ontario between the 1st February and the 1st August. § 4. Fishing in any river or creek by torch light within 100 yards of any mill, prohibited. § 5. Also buying, receiving, or having in possession any salmon taken or caught during the periods aforesaid. § 6. Any person convicted of any offence under this act before any one or more justices of the district where the offence is committed, shall forfeit and pay a sum not exceeding £10 nor less than 5s. for the first offence, with reasonable costs; and for every subsequent offence £5, with costs—amounts to be levied by distress and sale in form of warrant A, and in default of payment, or sufficient distress, commitment to the common gaol for not exceeding 30 days, unless sooner paid. § 7. Constable shall within 48 hours after receipt of warrant, seize offender's goods; and give list to the owner; and if fine and costs not paid within a certain time (not less than 8 nor more than 16 days) constable may sell; and shall within 48 hours after such sale pay over the fine and costs to the justice

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from whom the warrant was received. § 8. Constable may also levy the following fees:—For every levy 3s. 6d.; for bill of goods seized and notice 5s.; every sale 5s.; and for conveying offender to gaol 5s.: and 4d. per mile for travelling;—to be paid by the treasurer of the district upon the certificate of the convicting justice or justices. § 9. Penalties—one-half to the informer; the other to the district. § 10. Fishing in the Twenty Mile Pond, Township of Louth, Niagara District, with any net or weir prohibited; and permitted with spear, hook, or line only.

## SCHEDULE A.

*Form of Warrant of Distress.*

District of —.

To A. B., a constable for the — of —, greeting:

Whereas C. D., of —, in the district of —, was on the — day of — now last past (or instant) convicted before me (or us) of having (*here state the offence concisely*) against the form of the statute in such case made and provided, and hath therefore by me (or us) been condemned to forfeit and pay the sum of — currency, and costs, which said penalty hath not been paid, and the same remains to be paid in the manner provided by law: You are therefore commanded to levy, of the goods and chattels of the said C. D., which shall be found within the said district of —, the said sum of —, and your lawful fees; and to have this warrant and the said sum of — before me (or us) on or before the — day of — next (or instant, *allowing* the time mentioned in the act), or otherwise then and there to certify me (or us) of the reasons why the same shall not have been so levied. Given under my (or our) hand (or hands) and seal (or seals) this — day of —, in the year one thousand eight hundred and —.

Signature

or

Signatures.

[L. S.]

The forms necessary in proceedings to recover any of the penalties under these acts, will be found under their general titles of "Information," "Summons," "Conviction," "Distress Warrant," and "Commitment."

## SALT.

\* By 3 Vic. c. 18, a duty of sixpence per bushel is imposed upon every *fifty-six pounds* weight of salt, imported at any port of entry in this province, from the United States of America.

## SEARCH-WARRANT.

It seems that formerly it was not unusual for justices to grant general warrants to search all suspected places for stolen goods; yet such practice is generally condemned by the best authorities; and Lord Hale, in his pleas of the crown, says a general warrant

## Search Warrant.

to search for felons or stolen goods, is not good—*H. Pl.* 93; likewise, upon a *bare surmise* a justice cannot legally grant a warrant to break any man's house to search for a felon or stolen goods—4 *Inst.* 177; but in case of a complaint, and oath made, of goods stolen, and that the complainant suspects the goods are in a certain house or place, and shews the ground of his suspicion, the justice may grant a warrant to search in those suspected places mentioned in his warrant, and to attach the goods and the party in whose custody they are found, and bring them before him, or some other justice, to give an account how he came by them; and further, to abide such order as to law doth appertain.—2 *H. H.* 113, 150. But in cases not merely of probable suspicion, but of positive proof, it is right to execute the warrant in the *night time*, lest the offenders and goods also be gone before morning.—*Barl. Search W.*; such warrant must be directed to the *constable*, or a peace officer, and not to any private person; though the complainant may aid and assist, because he knows the goods.—2 *H. H.* 150. Whether the stolen goods are in a suspected house or not, the officer and his assistants, in the day time, may enter, the doors being open, to make search, and it is justifiable by this warrant.—2 *H. H.* 151. If the door be shut, and upon demand it be refused to be opened by them within, if the stolen goods be in the house, the officer may break open the door.—1 *H. H.* 151. If the goods be not in the house, yet it seems the officer is excused that breaks open the door to search, because he searched by warrant, and could not know whether the goods were there till search made; but it seems the party that made the suggestion is punishable in such case; for as to him the breaking of the door is *in eventum* lawful or unlawful—to wit, lawful if the goods are there; unlawful if not there.—2 *H. H.* 151. On the return of the warrant, if it appear the goods were not stolen, they are to be restored to the possessor; if it appear they were stolen, they are not to be delivered to the proprietor, but deposited in the hands of the constable; to the end that the party robbed may proceed, by indicting and convicting the offender, to have restitution.—2 *H. H.* 151. As touching the party that had the custody of the goods, if they were not stolen, then he is to be discharged; if stolen, but not by him, but by another that sold or delivered them to him, if it appear that he was ignorant that they were stolen, he may be discharged as an offender, and bound over to give evidence as a witness against him that stole them; if it appear that he knew they were stolen, he must be committed, or bound over to answer the felony.—2 *H. H.* 152.

By 4 & 5 Vic. ch. 25, § 55: if any credible witness shall prove upon oath before a justice of the peace, that there is

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reasonable cause to suspect that any property whatsoever on or with respect to which any *such* (a) offence shall have been committed, is in any dwelling-house, out-house, garden, yard, croft, or other place or places, the justice may grant a warrant to search such dwelling-house for such property, as in the case of stolen goods; and any person to whom any property shall be offered to be sold, pawned or delivered, if he shall have reasonable cause to suspect that any such offence has been committed on or with respect to such property, is hereby authorised, and if in his power is required, to apprehend, and forthwith to convey before a justice of the peace, the party so offering the same, together with such property, to be dealt with according to law.

## Information to obtain a Search Warrant for Goods.

County of —, } Be it remembered, that this — day of —, in  
to wit, } the year of our Lord 18—, A. B. of —, in his  
proper person, cometh before me, J. C., esquire, one of her Majesty's  
justices, &c., and upon oath maketh complaint, that on the — day of  
—, (or within — days, as the fact is,) divers goods and chattels of  
him, the said A. B., of the value of —, to wit: (*describe the goods  
stolen*) were feloniously stolen, taken and carried away from and out of  
the dwelling-house of him, the said A. B., situate at — aforesaid, in  
the county aforesaid, by some person or persons unknown; and that he  
hath just cause to suspect, and doth suspect, that the said goods and  
chattels, or some part thereof, are concealed in the dwelling-house of  
E. F., of —, in the said county, labourer; for he, the said A. B.,  
upon his oath, doth depose and say that (*state the grounds of suspicion,  
which must be reasonable*), and thereupon the said A. B. prayeth that  
justice may be done in the premises, and a search warrant granted.

Taken before me, J. C.

A. B.

## Form of a Search Warrant.

County of —, } To the constable of —.  
to wit, }

Whereas it appears to me, R. S., esquire, one of the justices of our  
lady the Queen assigned to keep the peace in the said county, by the  
information of — of —, in the said county, yeoman, that certain  
goods and chattels, to wit: (*here name them*) have within — days  
last past, by some person or persons unknown, been feloniously  
stolen, taken and carried away out of the house of the said —, at  
— aforesaid, in the county aforesaid; and that the said — hath  
probable cause to suspect, and doth suspect, that the said goods and  
chattels, or some part of the same, are now concealed in the dwelling-  
house of —, of —, in the said county of —, yeoman: These  
are therefore, in the name of our lady the Queen, to authorise and  
require you, with necessary and proper assistants, to enter in the day  
time into the dwelling-house of the said —, at — aforesaid, in the

(a) See title "Larceny."

county aforesaid, and there diligently to search for the said goods and chattels; and if the same, or any parts thereof, shall be found upon such search, then that you bring the goods and chattels so found, and also the body of the said — before me, or some other of the justices of our said lady the Queen assigned to keep the peace in the said county, to be disposed of and dealt with according to law. Given under my hand and seal at — aforesaid, in the said county, the — day of —, in the year of our Lord 18—.

### SEDITION.

Sedition is understood to comprise within its meaning all offences against the Queen and the government, which are not capital, and do not amount to the crime of high treason. It includes all offences of like tendency with treason, but without any such direct intent or overt act of the party formed or executed as to bring it within the more serious offence. All contempts against the Queen and her government, and riotous assemblies for political purposes, may be ranked under the head of sedition; though it has been held, that when the object of the riot is to redress a general grievance, as to pull down all enclosures, or to reform religion, or the like, it may then amount to an overt act of high treason; being in the nature of a levying of war against the Queen: and see *ante* "Riot," p. 586. And in general, it may suffice to remark, that all contemptuous, indecent or malicious observations, upon the person of the Queen or her government, whether by writing or speaking, or by tokens calculated to lessen her in the esteem of her subjects, to weaken her government or raise jealousies of her amongst the people, will fall under the notice of sedition; as well as all direct or indirect acts or threats, tending to overcome her measures, or disturb the course of her government, not amounting to overt acts of treason. All these attempts are highly criminal at common law, and are punishable with fine and imprisonment.—4 *Bl. Com.* 147; 1 *Haw. c.* 65, § 6; 1 *E. P. C.* 76.

### SERVANTS.

By 32 G. III. c. 56, any person falsely personating any master or mistress, or giving a false character, or any servant offering a false character, shall forfeit £20, to be recovered before two justices upon oath of one witness. A servant may be discharged at a moment's warning for immorality, or gross misconduct—*R. v. Brampton, Cald*; or for wilful disobedience of orders.—*Spain v Amott*, 2 *Star. Rep.* 256. And if a servant of his own accord go away before his time expires, he runs the risk of losing all his wages—*Dalt c.* 58, p 141; and when discharged for misconduct, will be entitled only to wages due

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at the time of his discharge.—3 *Esp.* 235. If a servant, however, not having been guilty of any misconduct, be discharged without warning, he is entitled in such case, if hired by the month, to a month's wages above those that may be due.—2 *Sel. N. P.* 1032.

See also title "Master and Servant."

### SESSIONS.

The sessions of the peace is a court of record, holden before two or more justices, for the execution of their general authority, given them by the commission of the peace, as well as by certain statutes.—*Lamb.* 349; *Dalt.* 456. There must also be two justices (at the least) present in order to adjourn the sessions legally; and two justices also, to hold an adjournment.—*Rex v. Westington*, 2 *Bolt.* 733; 1 *Blk. Com.* 354, n. When the sessions is adjourned, the style of the court ought to run thus: "At such a session, held by adjournment:" but the original meeting of the sessions should be first set forth; and then it should be stated that the sessions were "continued from thence to such further time by adjournment."—2 *Stru.* 832, 865.—*R. v. Walker*, *Sess. Cas.* 21.

Any two justices may direct their precept under their *teste* to the sheriff, for the summons of the sessions—2 *Haw.* 41; and such precept should bear date fifteen days before the return, and ought forthwith to be delivered to the sheriff, so that he may have sufficient time to proclaim the sessions, to summon and return the juries, and to warn all officers and others that have business there to attend.—*Nels. Introduct.* 35; *Burn's Justice*, 97, *Ed.* 10.

Those who are bound to appear at the sessions, besides the justices of the peace, are—1. The *Custos Rotulorum*, or his sufficient deputy, who is the clerk of the peace, for the *Custos Rotulorum* has the custody of the rolls or records of the county. 2. The sheriff, either by himself or his deputy; it being his duty to return jurors, receive fines, and execute process. 3. All coroners, whose duty is to summon jurors, and execute process upon the default or neglect of the sheriff, or in case of his absence, or having an interest in the matter before the court. 4. The constables of the several townships within the county, and all other officers to whom any warrant has been directed, in order to make a return thereof. 5. The keeper of the gaol, who is bound to bring up the prisoners, and to receive such as may be committed. 6. All persons returned as jurors by the sheriff, by virtue of the above mentioned precept. 7. All persons bound by recognizance to appear to answer, or to prosecute and give evidence.—*Dalt. c.* 185; *Burn*, 98, 99; *Ed.* 10.

By 22 G. II. c. 46, § 12, no person shall act as *solicitor* attorney, or *agent* at the sessions, unless he is admitted & enrolled according to law, under the penalty of £50. And by § 14, *clerks of the peace, under sheriffs*, and their respective *deputies*, are prohibited under the like penalty from practising at the sessions.

### Of the Jurisdiction of the Sessions.

1. The jurisdiction of the sessions, by 34 Ed. 5. c. 1, extended to the trying and determining all *felonies* and *trespasses* whatsoever. But now they ought not to try any greater offence than that of *simple larceny*, their commission providing, that if any case of difficulty arises they shall not proceed to judgment, but in the presence of one of the justices of the Court of Queen's Bench, or one of the judges of assize. Consequently, *murders, burglaries*, and other capital *felonies*, are reserved for a more solemn investigation at the assizes. Sessions have no commission of *gaol delivery*; neither do they any jurisdiction over *forgery* or *perjury* at common law; *R. v. Gibbs*, 1 East 473. *R. v. Yarrington*, 1 Salk. 406; *R. v. Bainton*, 2 Ld. 1088; 2 Haw. c. 8 § 36: nor over any *new created* offence, as *usury*; unless express jurisdiction is given to them by the statute creating the offence.—*R. v. Smith*, 2 Ld. R. 1144; 1 Bl. Rep. 369; 2 Salk. 680. The general words in the commission of the peace, including all *trespasses*, this comprehends not only direct breaches of the peace, but also such offences as have a tendency thereto; and on this ground, *conspiracies* and *rebels*, or any *illegal solicitations, attempts*, or *endeavors* to commit crimes, have been holden to be cognizable by the sessions.—*R. v. Higgins*, 2 East. R. 23; *R. v. Summers*, 3 Salk. 194; *R. v. Rispoli*, 3 Burr. 1320; 1 Bl. 369. The sessions have, like every other court, the power to fine for a contempt committed in the face of the court.—*R. v. Davison*, 4 B. & A. 334. But they cannot award an attachment for a contempt in disobeying any of their orders, the ordinary and proper method being by *indictment*.—*R. v. Bartlett*, 2 Sess. Cas. 176; *R. v. Robinson*, 2 Burr. 800; *R. v. Kingdon*, 8 East. 41; 4 Burn's J. 124. The sessions have also power to fine jurors for non-attendance at the court, upon proof of their having been duly summoned; also to commit to gaol any person guilty of contemptuous or disrespectful conduct in the presence of the court. But the sessions have no power to amerce any justice for his non-attendance at the sessions, as the judges of assize may for the absence of any such justice at the gaol delivery.—2 Haw. 41, 42. Nor are justices punishable for what they do in sessions—*Stat. 175*—unless there be

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some manifest act of oppression, or wilful abuse of power.—2 *Barnardist*, 249, 250.

Justices in quarter sessions may also make rules and regulations for the gaols, which, when approved of by a judge of the Court of King's Bench, shall be in force—\*32 *G. III. c. 8*, § 16 (a); and fix the salary of the gaoler, which shall be in lieu of all fees—*Id.*; § 17, appoint the high constable and other constables, in the April sessions—\*33 *G. III. c. 3*, § 10; grant certificates authorising the clergy of different congregations to solemnize matrimony—\*11 *G. IV. c. 36*; may grant certificates in case of the death of witnesses to deeds, &c. of the due execution thereof, in order to their registry—9 *Vic. c. 34*, § 3; cannot take cognizance of illegal marriages—\*2 *G. IV. c. 11*; may appoint inspector of weights and measures—\*4 *G. IV. c. 16*.

\*By 47 *G. III. c. 12*, § 2, when any person shall be convicted of any assault or misdemeanor before the sessions, he shall pay the costs of prosecution and conviction to be allowed and taxed by the court; and when the defendant shall be acquitted, the prosecutor, unless it shall appear there were reasonable grounds for prosecution, to be certified by the chairman, shall pay the defendant's taxed costs. The defendant's costs upon a presentment, if the defendant be acquitted, shall be paid out of the district treasury.

\*By 7 *W. IV. c. 4*, § 2, the courts of general quarter sessions of the peace in the several districts of this province shall have power to try every case of simple larceny, and also to try all accessories to such larceny: *Provided always*, that unless the justice presiding in any such court shall be a barrister duly admitted to practise at the bar in this province, then it shall not be lawful for such court to try any case of larceny when the goods charged to have been stolen shall exceed in value the sum of £20. § 3. No court whose jurisdiction in cases of larceny is extended by this act, shall have power to sentence a person convicted of larceny to be transported for any period, or to be banished for a longer period than seven years, or to be imprisoned in a common gaol for a longer period than eight months, or to be imprisoned and kept to hard labour in any penitentiary or house of correction for a longer period than two years. § 4. It shall be lawful for any court having jurisdiction in cases of larceny, if they shall think fit, to sentence any person convicted thereof to be banished from the province for any number of years not exceeding seven, to commence from the expiration of the term for which the same person may upon the

(a) See also, 1 *V. c. 5*, § 6.

same conviction be sentenced to be imprisoned in the common gaol, or imprisoned and kept to hard labour in a penitentiary or house of correction. § 5. The court may, in its discretion, leave cases of simple larceny to be tried at the next court of oyer and terminer and general gaol delivery, if by reason of the difficulty or importance of the case it shall appear to them proper so to do. § 6. If upon the trial of any case of larceny in which the value of the goods stolen shall be stated in the indictment at a sum not exceeding £20, it shall appear in evidence that the value of such goods was in reality greater than £20, such trial may nevertheless proceed, and no legal exception to the jurisdiction of the court shall lie on that account; but the provision of this act restraining such court to cases where the value of the goods shall not exceed £20, shall be deemed and taken merely to be a direction to such court, but shall not be construed to affect their legal jurisdiction.

\* By 7 W. IV. c. 6, § 2, no court of general quarter sessions of the peace, or court having the like jurisdiction, shall have the power to sentence any person convicted before them to be imprisoned in the penitentiary for a longer period than two years.

#### *Quarter Sessions.*

By 4 & 5 Vic. c. 8, § 18, the judge of the district, being also a justice of the peace for such district, shall preside as chairman at the general quarter sessions.

#### *The proceedings at a General Quarter Sessions.*

The court having assembled, the session is then usually proclaimed by a bailiff, in the following terms:

"Oyez! Oyez! Oyez! the Queen's justices do strictly charge all manner of persons to keep silence, while the Queen's commission of the peace for this county is openly read, upon pain of imprisonment."

The commission is then read by the clerk of the peace.

The clerk of the peace then calls upon the sheriff, thus: "Sheriff of the county, return the precept to you delivered;" which the sheriff does accordingly.

Then the grand jury are called in order, every one by his name. The foreman, by himself, lays his hand on the book, and the clerk of the peace administers to him the following oath:

"Sir,—You, as foreman of this grand inquest, for the body of this county, shall diligently inquire and true presentment make of all such matters and things as shall be given you in charge. The Queen's counsel, your fellows, and your own, you shall keep secret: you shall present no one for envy, hatred or malice; neither shall you leave any one unrepresented for fear, favour or affection, or hope of reward; but you shall

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present all things truly, as they come to your knowledge, according to the best of your understanding. So help you God.

The rest of the grand jury, by "three" at a time, in order, are sworn in the following manner:

"The same oath which your foreman hath taken on his part, you and every of you shall well and truly observe and keep on, your part. So help you God."

The clerk of the peace then calls over their names thus:

"Gentlemen of the grand jury, answer to your names, and say *sworn*, if you are sworn."

The foreman then delivers his charge to the grand jury.

The bailiff is then sworn to attend the grand jury, thus:

"You shall swear that you will diligently attend the grand inquest during the present sessions, and carefully deliver to them all such bills of indictment or other things as shall be sent to them by the court, without alteration. So help you God."

By 8 Vic. c. 8, the claims of persons claiming under the "Heir and Devisee Act," shall be proclaimed by the crier, at the sessions next after the notice given, immediately after the charge to the grand jury.

The prosecutors and bail are then called in the following manner (if need be) by the crier:

"A. B. come forth and prosecute, and give evidence against C. D., or you will forfeit your recognizance."

*Calling persons out upon bail.*

"A. B. of the township of —, come forth and save you and your bail, or you will forfeit your recognizance."

*Calling Bail to bring forth Principals.*

"C. D. and E. F. (with their additions) bring forth the body of A. B. whom you have undertaken to appear here this day, or you will forfeit your recognizance."

*Oath of Witness on Indictment before the Grand Jury.*

"The evidence you shall give to the grand inquest upon this bill of indictment against A. B. for larceny shall be the truth, the whole truth, and nothing but the truth. So help you God."

If the witness be a Quaker, his evidence is admissible under the \*10 G. IV. c. 1, upon making the following affirmation, in lieu of any oath:

"I, A. B. do solemnly, sincerely and truly declare, that I am one of the society called Quakers, [Menonists, Tunkers, Unitas Fratrum, or Moravians,] as the case may be."

Upon the return of the grand jury into court with any bills of indictment, the clerk of the peace calls them severally by their names, and says, "Gentlemen, have you agreed upon any bills?"

Upon the foreman presenting the same, the clerk of the peace addresses the grand jury as follows:

"You are content the court shall amend matter of form, altering no matter of substance without your privy, in those bills you have found."

The grand jury signify their assent, and return to their business again—viz., to examine other bills.

Then the court proceeds to arraign such prisoners as are indicted, in the manner following:

The clerk of the peace says, "A. B., hold up your hand: you stand indicted by the name of A. B., late of —, for that you," so reads the indictment through, and then asks the prisoner, "Are you guilty or not guilty?" If he says "not guilty," then the clerk of the peace enquires, if he be ready for his trial.

The clerk of the peace then proceeds to call the petit jury, thus:

"You good men that are impannelled to try the issue joined between our sovereign lady the Queen and the prisoner at the bar, answer to your names, upon pain and peril that shall fall thereon."

When the jurors have appeared, then the clerk of the peace calls to the bar the prisoners that are to be tried by the jury, and says thus:

"These good men that you shall now hear called are those that are to pass between our sovereign lady the Queen and you, if therefore you [or any of you] will challenge them, or any of them, you must challenge them as they come to the book to be sworn, before they are sworn, and you shall be heard."

Then the clerk of the peace calls the jury to be sworn, in cases of felony, one by one, thus:

"You shall well and truly try and true deliverance make between our sovereign lady the Queen and the prisoner at the bar, whom you shall have in charge, and a true verdict give according to the evidence. So help you God."

But in cases of misdemeanor, the jury may be sworn three at one time, thus:

"You shall well and truly try the issue joined between our sovereign lady the Queen and the defendant, and a true verdict give according to the evidence. So help you God."

The clerk of the peace then calls over the jury, and says, "Gentlemen, answer to your names and say 'sworn,' if you are sworn."

The prisoner being at the bar, the clerk of the peace then proceeds to read the indictment, thus:

"A. B. stands indicted by the name of A. B." &c. reading the whole of the indictment as he did upon the arraignment, and then says, "upon

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this indictment the defendant [*or the prisoner at the bar, as the case may be*] hath been arraigned, and upon his arraignment hath pleaded not guilty, your duty therefore is to inquire whether he be guilty or not guilty, and to hearken to the evidence."

And then the court proceeds to examine the witnesses upon oath, as well for the Queen as for the prisoner.

*Oath of Witnesses.*

"The evidence you shall give to the court and jury sworn, between our sovereign lady the Queen and the defendant [*or the prisoner at the bar, as the case may be*], shall be the truth, the whole truth, and nothing but the truth. So help you God."

Upon the evidence being closed for the prosecution, the prisoner's counsel, in cases of felony as well as misdemeanor, may address the jury and call witnesses. If the prisoner have no counsel, he should be asked by the chairman if he have any thing to say in his defence, or any questions to ask. Upon the case being closed, the chairman sums up the evidence to the jury, commenting upon it as he proceeds, shewing the consistency or inconsistency of any part of it, and the bearing it has upon the guilt or innocence of the prisoner. The chairman then desires the jury to retire and consider their verdict. Upon the jury retiring to consider their verdict, the following oath is administered to the bailiff:

"You shall swear you will keep every person of this jury together in some private and convenient place, without meat, drink, lodging or fire (candle excepted); you shall not suffer any person to speak to them or any of them, neither shall you speak to them yourself, unless it be to ask them whether they are agreed upon their verdict, without leave of the court. So help you God."

When the jury return, their names are called over by the clerk of the peace, who says, "Gentlemen, are you agreed on your verdict?—how say you, is the defendant [*or prisoner, as the case may be*] guilty or not guilty?"

The verdict is then endorsed by the clerk of the peace, on the indictment, and signed by the chairman, which being done, the former addressing the jury, says, "Gentlemen, hearken to the verdict as the court records it. You find the defendant [*or prisoner*] guilty," [*or not guilty, according to the verdict.*]

Should the defendant, however, upon being arraigned, be permitted to traverse to the next sessions, he may be admitted to bail, as follows:

"A. B. [*principal*] you acknowledge to owe to our sovereign lady the Queen the sum of (£——, whatever sum the court may approve), and you, C. D. and E. F. (*sureties*) severally acknowledge to owe to our said lady the Queen the respective sums of (£——) and (£——), to be respectively levied of your goods and chattels, lands and tenements,

to her Majesty's use, by way of recognizance, upon condition that you (A. B.) shall appear at the next General Quarter Sessions of the Peace to be holden for this county, to try your traverse upon this indictment, to which you have now pleaded not guilty, and not depart the court without leave of the court. How say you, A. B., C. D. and E. F., are you content?"

If a juror be taken ill during a trial, another juror may (with the consent of the prisoner) be sworn and added to the other eleven, and the evidence redelivered to the jury.—*Joyce's case cor. Lord Keeper, Leach, 621, n.* But even without the consent of the prisoner, the court may, under such circumstances, discharge the jury and charge a fresh jury with the prisoner. But the prisoner must be again allowed his challenge to each of the eleven former jurymen.—*R. v. Edwards, 4 Taunt. 309.*

### *Trial of a Traverse.*

The proceedings upon a traverse are the same as in an original trial, except that the defendant is not arraigned nor called upon to plead, this having been already done at the former sessions.

The jury are to be sworn and indictment read as before directed.

### *Oath of a Jury on a Traverse.*

"You shall well and truly try the issue of this traverse between our sovereign lady the Queen and the defendant, and a true verdict give according to the evidence. So help you God."

### *Oath of Witnesses on a Traverse.*

"The evidence you shall give to the court and jury sworn, touching the issue of this traverse, shall be the truth, the whole truth, and nothing but the truth. So help you God."

In discharging the defendant's recognizance for default of the prosecutor appearing, (which ought not to be done till the close of the session,) proclamation is made thus:

"Oyez! Oyez! Oyez! If any can say ought why (defendant, naming him) should any longer be bound, let them come forth and they shall be heard; otherwise the court does discharge him, paying his fees."

The court cannot commit for nonpayment of fees: for if there is right, there is a remedy; and *indebitatus assumpsit*, will lie if the fee is certain, if uncertain, *quantum meruit*.—*L. Ray, 703.*

When there are no more bills to be laid before the grand jury, and they have finished all other business before them, it is usual for the court to inform them that there is no other business to come before them, and that they are therefore discharged.

The court having disposed of the business, then adjourn.

The clerk of the peace, during the sitting of the court, enters

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Victoria, Britain and greeting; V laid aside, a before our

a minute of all proceedings, commencing with the day of the session, and before whom the same is held, inserting the names of the grand jurors and petit jurors, and every other minute particular attending the proceedings throughout.

*Precept to Summon the Sessions.* [BURN.]

County of —, } J. P. and K. P. esquires, justices of our sovereign  
to wit. } lady the Queen, assigned to keep the peace in the  
county aforesaid, and also to hear and determine divers felonies, trespasses, and other misdemeanors committed in the said county; to the sheriff of the county of —, greeting: On the part of our sovereign lady the Queen, we command you, that you omit not by reason of any liberty within your county, but that you cause to come before us and other our fellow justices assigned to keep the peace in the said county, and also, to hear and determine divers felonies, trespasses and other misdemeanors, in the said county committed, on — the — day of —, now next ensuing, at the hour of ten in the forenoon of the same day, at — in the said county, twenty-four good and lawful men, of the body of your county, then and there to enquire, present, do and perform, all and singular, such things, which on the behalf of our sovereign lady the Queen, shall be enjoined them; also, that you make known to all coroners, keepers of gaols and houses of correction, high constables, and bailiffs of liberties within the aforesaid, that they be then and there, to do and fulfil such things which by reason of their offices, shall be to be done: moreover, that you cause to be proclaimed through the said county, in proper places, the aforesaid sessions of the peace, to be holden at the day and place aforesaid; and do you be then there, to do and execute those things which belong to your office; and have you then there, as well the names of jurors, coroners, keepers of gaols and of houses of correction, high constables and high bailiffs aforesaid, as also this precept.

Given under our hands and seals, at — in the county aforesaid, the — day of — in the — year of the reign of —, &c.

*The style of the Sessions.* (BURN.)

County of —, } The general quarter sessions of the peace, holden  
to wit. } at —, in and for the said county, on the —  
day —, in the — year of the reign of our sovereign lady Victoria, of Great Britain and Ireland, Queen, defender of the faith, and so forth, before J. P. and K. P. esquires, and others, justices of our said sovereign lady the Queen assigned to keep the peace in the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed, and so forth.

*Subpoena to give Evidence.*

Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland, Queen, defender of the faith; to A. B; C. D. &c. greeting; We command you and every of you, that all business being laid aside, and all excuses ceasing, you do in your proper persons appear before our justices assigned to keep our peace in the county of —,

and also to hear and determine divers felonies, trespasses, and other misdemeanors in our said county committed, at the general quarter sessions of the peace to be holden at —, in and for the said county, on — the — day of — now next ensuing, at the hour of — o'clock in the forenoon of the same day, to testify the truth, and give evidence before the grand inquest as well as the court, touching a bill of indictment to be preferred against A. O. in a case of larceny, [trespass and assault, or any other cognizable offence,] and this you, and every of you, are in no wise to omit, under the penalty of — pounds for you and every of you. Witness, J. P. esquire, the — day of —.

*A Subpoena Ticket for a Witness.*

Mr. A. W. By virtue of a writ of subpoena to you and others directed and herewith shewn unto you, you are required personally to be and appear at the next general quarter sessions of the peace to be holden at —, in and for the county of —, to testify the truth, and give evidence before the grand inquest as well as the court, touching a bill of indictment to be preferred against A. O. in a case of larceny, [trespass and assault, &c., as the case may be,] and herein you are not to fail, upon pain of — pounds. Dated the — day of —, in the year of our Lord —.

SHERIFF.

The sheriff is an officer of very great antiquity, his name being derived from the Saxon word *scirgerefa*, signifying the reeve bailiff, or officer of the shire. He is called in Latin *vice-comes*, as being the deputy of the earl or comes, to whom the custody of the shires in England is said to have been committed at the first division of the kingdom into counties: but, though the sheriff be called *vice-comes*, yet he is entirely independent of the earl; the king, by his letters patent, committing *custodiam comitatus* to the sheriff, and to him alone.—1 Bl. Com. 339; 5 Burn. 230.

In this province, the sheriff is appointed by letters patent under the great seal, and holds his office during pleasure.

In his ministerial capacity the sheriff is bound to execute all process issuing from the king's courts of justice. In the commencement of civil causes he is to serve the writ, to arrest, and to take bail: when the cause comes on for trial he must summon and return the jury; when it is determined, he must see the judgment of the court carried into execution. In criminal matters he also arrests and imprisons; he returns the jury; he has the custody of the delinquent; and he is bound to execute the sentence of the court, even if it extend to death itself; and it is no excuse to the sheriff to return that he could not execute any process because of resistance, for he may take with him in every case of need the power of the county, to enforce obedience to the king's writs or other process of law.—13 Ed. I. stat. 1, c. 39. He is also compelled to execute the warrant of

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a justice of the peace, if upon any extraordinary occasion it should be directed to him—though magistrates' warrants are, in practice, usually directed to constables and other inferior officers; but he need not go in person to execute it, but may authorise another to do so.—2 *Haw. c. 13, § 29*. He is also bound to attend the sessions of the peace, there to return his precepts; to take charge of the prisoners; to receive fines for the king, and the like.—2 *Haw. c. 8, § 45*. And for any default in executing the writs or precepts of the sessions he is punishable by the justices in sessions as for a contempt.—*Id.*, c. 22, § 2.

The sheriff has also the keeping of the gaols, and is answerable for all escapes suffered by the gaolers, to the king, if it be a criminal matter; or, in a civil cause, to the party injured; and by provincial statute \*32 Geo. III. c. 8, he has the appointment and removal of the gaoler.

As the *King's bailiff*, it is the business of the sheriff to preserve the rights of the king within his bailiwick.—*Fortescue*, c. 24. He must seize to the king's use, all lands devolved to the crown by *attainder* or *escheat*.—1 *Bl. Com.* 344.

By 3 G. I. c. 15, § 17, a sheriff guilty of extortion forfeits, to the party grieved, treble damages, and double the sum extorted, and also £200. And by provincial statute, \*2 G. IV. c. 9, a sheriff lying in gaol for debt three months forfeits his office.

When a new sheriff is appointed and sworn, his predecessor (or in case of his decease, his under sheriff) sets over by indenture all the prisoners severally by their names, together with all the writs, wherein must be comprehended all the actions which the old sheriff hath against every prisoner; and till the delivery of the prisoners to the new sheriff they remain in custody of the old sheriff.—*Wood's Inst.* 6, 1, c. 7.

\*By the 3 W. IV. c. 9, entitled, "An act to make certain regulations relating to the office of sheriff in this province, and to require the several sheriffs of this province to give security for the due fulfilment of the duties of their office," it is enacted by § 1, that the sheriff of each district shall enter into a bond to his Majesty, in the penal sum of £1000, together with two sureties to be approved by the inspector-general of public accounts, in £500 each, for the payment of all monies due to the crown; which bond shall be in the form given in schedule A. or in words to the like effect. § 2. The sheriff of every district shall also provide two or four sufficient sureties, who, with himself, shall enter into a covenant under seal, joint and several, according to the form in schedule B, or in words to the same effect; which covenant shall be available to, and may be

sued upon by, any person suffering damages by the default of any such sheriff. § 3. Such sureties shall be approved of by the justices in sessions, and a certificate thereof given by the chairman. § 4. The bond to his Majesty shall be deposited with the inspector-general, and the covenant shall be made in duplicate, one of which shall be deposited with the secretary of the province, and the other filed with the clerk of the peace. § 5. Any person may examine such covenant, and have a copy on payment of 1s. 3d. for the examination, and 5s. for the copy to the clerk of the peace. § 6. That such bond and and covenant shall be renewed every four years, either with the same or other sufficient sureties, to be certified as aforesaid. § 7. Whenever the office of sheriff shall become vacant, his successor shall not be appointed until he has first filed the requisite covenant and bond, with sureties. § 8. And no person shall be appointed sheriff who shall not be possessed of real estate in this province of the actual value of £750 above incumbrances; and shall, before he receives his commission, file an affidavit of the fact, in the office of the secretary, to be sworn before the chairman of the quarter sessions. § 9. In case of death, absence from the province, or insolvency of any surety, new securities shall be given. § 10. The sureties, apprehensive of the solvency of their principal, may notify the same to the lieutenant-governor by affidavit to that effect, sworn before a commissioner of the King's Bench; and thereupon the sheriff shall be notified by the secretary to furnish new security, or on affidavit deny that he is insolvent, or worth less than £750 over and above all incumbrances; and if such requisition be not complied with within one month after the sitting of the then ensuing quarter sessions of the district, he shall be removed from office. § 11. When any new sureties shall be given, the former sureties shall not be discharged from any defaults previous thereto. § 12. Actions brought on the sheriff's covenant, shall not bar other actions on the same covenant for other causes. § 13. Any surety, having paid the full amount for which he became liable, shall be thereby discharged; and the sheriff shall, within four months, give new securities. § 14. If the damages recovered and paid by any surety is not equal to the amount for which he is bound, judgment may be obtained against him for any residue. § 15. Upon proof, by affidavit or otherwise, to the general quarter sessions, that any security has been discharged, or is insolvent, it shall be lawful for the sessions to notify the sheriff thereof, and such sheriff shall renew the covenant within four months after such notice. § 16. Executions against the sheriff and his sureties shall be first levied upon the sheriff. § 17. The sheriff shall be liable

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to pay the costs of all rules upon him, unless the court shall order otherwise; but in vexatious applications the court may award costs to the sheriff. § 18. The sheriff shall not be entitled to any fees on any writ placed in his hands fifteen days before the return day, if he does not return the same to the attorney within four days after such return, or enclose the same by post within that time, to such attorney. § 19. Any sheriff neglecting to give the required security shall be removed from office. § 20. The covenants to be entered into by the sheriffs of the several districts, shall specify the following sums, as the extent thereof, viz.:—Sheriffs of the Home district, district of Niagara, district of Gore, district of London, district of Newcastle, Midland district, district of Johnstown, Eastern district, in the sum of £1000 each, and two sureties in £500 each, or four sureties in £250 each; and the sheriffs of the Western district, district of Bathurst, district of Ottawa, in the sum of £500 each, and two sureties in £250 each, or four sureties in £125 each; and that the sheriff of any new district hereafter to be formed, shall give security, himself in £1000, and two sureties in £500 each, or four securities in £250 each. § 21. The sureties entering into any such covenant shall be held liable for any omission or default of the sheriff, in not paying over monies received by him, and for damages sustained by the parties to any legal proceeding, in consequence of wilful or negligent misconduct in office, and that the sheriff shall be joined in any action against the sureties. § 22. Notwithstanding any forfeiture of office, the sheriff shall be continued in office until the appointment of his successor, subject to his prior liabilities. § 23. Upon the death of any sheriff, the deputy sheriff shall continue to execute the office in his name until the appointment of a successor; and such deputy sheriff shall be held responsible, as the sheriff deceased would have been; and the deceased sheriff's sureties shall also stand as a security for such undersheriff.

NOTE.—The 6th and 19th clauses of this act have been repealed by the 4 & 5 V. c. 19.

See also "Public Officers," ante. p. 550.

#### SCHEDULE A.

##### *Form of Bond to the Queen.*

Know all men by these presents, that we, A. B. sheriff of the county of —, C. D. of —, in the county of —, esquire, and E. F. of —, in the county of —, are held and firmly bound to our sovereign lady the Queen, her heirs and successors, in the several sums following, that is to say: the said A. B. in the sum of one thousand pounds; the said C. D. in the sum of five hundred pounds; and the said E. F. in the sum of five hundred pounds; to be paid to our sovereign lady the

Queen, her heirs and successors, for which payments to be well and truly made, we bind ourselves severally and respectively, and each of us, our heirs, executors and administrators, firmly by these presents, sealed with our seals, and dated this — day of —, in the year of our Lord —.

The condition of this obligation is such, that if the above bounden A. B. his executors or administrators, shall well and faithfully account for, and pay over to her Majesty's receiver-general of this province, or to such person as may be authorised to receive the same, all such sum and sums of money as he shall receive as such sheriff as aforesaid, for our said lady the Queen, her heirs or successors, from the date of this obligation until the — day of —, in the year of our Lord — (four years), then this obligation to be void, otherwise to remain in full force and virtue.

[L. S.]  
[L. S.]  
[L. S.]

Signed, sealed and delivered in presence of —.

#### SCHEDULE E.

#### Form of Covenant.

Know all men by these presents, that we, A. B., sheriff of the county of —, C. D. of —, in the county of —, and E. F. of —, in the county of —, (when four sureties are given, the names of the other two to be inserted in like manner), do hereby jointly and severally, for ourselves, and for each of our heirs, executors and administrators, covenant and promise, that A. B. as sheriff of the said county, shall well and duly pay over to the person or persons entitled to the same, all such monies as he shall receive by virtue of his said office of sheriff, from the date of this covenant to the expiration of four years thence next ensuing, and that neither he nor his deputy shall, within that period, wilfully misconduct himself in his said office, to the damage of any person being a party in any legal proceeding: nevertheless, it is hereby declared, that no greater sum shall be recovered under this covenant, against the several parties thereto, than as follows, that is to say:

Against the said A. B. in the whole —.

Against the said C. D. —.

Against the said E. F. —.

(If other sureties, add them in like manner.)

In witness whereof, we have to these presents set our hands and seals, this — day of —, in the year of our Lord —.

[L. S.]  
[L. S.]

[L. S.]  
[L. S.]

Signed, sealed and delivered, in the presence of —.

#### SHIPS.

By the 4 & 5 Vic. c. 26, § 7, whosoever shall unlawfully and maliciously set fire to, cast away, or in anywise destroy any ship or vessel, either with intent to murder any person, or whereby the life of any person shall be endangered, shall be

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guilty of felony, and being convicted thereof shall suffer death.

§ 8. Whosoever shall unlawfully exhibit any false light or signal, with intent to bring any ship or vessel into danger, or shall unlawfully and maliciously do anything to the immediate loss or destruction of any ship or vessel in distress, shall be guilty of felony, and being convicted thereof shall suffer death.

§ 9. Whosoever shall unlawfully and maliciously set fire to, or in anywise destroy any ship or vessel, whether the same be completed or in an unfinished state; or shall unlawfully and maliciously set fire to, cast away, or in anywise destroy any ship or vessel, with intent thereby to prejudice any owner or part owner of such ship or vessel, or of any goods on board the same, or any person that hath underwritten or shall underwrite any policy of insurance upon such ship or vessel, or on the freight thereof, or on any goods on board the same, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be imprisoned at hard labour in the provincial penitentiary for the term of his natural life, or for any other term not less than seven years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years.

By the 10 & 11 Vic. c. 4, § 3, attempt to set fire to any vessel is made felony, and punishable by imprisonment in the provincial penitentiary for not more than seven, nor less than three years; or in the common gaol for not exceeding two years.

See also title "Wreck."

## SHOP-KEEPERS.

\*By the 37 Geo. III. c. 11, every shop-keeper or other person selling any wine, brandy, rum, or other spirituous liquors, in less quantity than three gallons at any one time, shall take out a license, (from the inspector of the district, by the \*43 Geo. III. c. 6), upon payment of the like rates, duties and fees, as were then paid by any person licensed to keep a house of public entertainment; and any person selling any wine, rum, brandy, or other spirituous liquor, in less than three gallons, without such license, shall incur the penalty of £20, one moiety thereof to be paid to the informer, and the other to the receiver general, for the use of the province, to be recovered in the manner and form set forth in the \*34 Geo. III. c. 12.

\*By the 40 Geo. III. c. 4, § 3, no licensed shop-keeper shall sell less than one quart, under the penalty of £20, to be recovered before three justices, and levied, with costs of suit, by distress and sale—one half of the penalty to the informer, and

the other to the use of the province; and in default, the offenders shall be committed for any term not exceeding three calendar months. § 4. Prosecution to be commenced within six months.

\*By 2 Wm. IV. c. 20, after reciting that the \*54 Geo. III. entitled "an act to grant an additional duty on shop and tavern licenses," had expired, and that it was expedient to continue the same, and to require persons selling wines or spirituous liquors on board of steam-boats to pay an additional duty—it is enacted that, in addition to the sum of 21 16s. sterling, and 20s. currency, required by law for a shop-keeper's license, there shall be paid the further sum of £2 currency.

§ 2. And every person selling wine, brandy, or spirituous liquors, on board of any steam-vessel, shall be entitled to a license, without entering into bonds or recognizances to keep an inn, upon payment of £2, in addition to £1 16s. sterling, and 20s. currency, now required to be paid by law. § 3. Any person selling wines or spirituous liquors on board of any steam-boat without having obtained such license, shall be subject to all the penalties imposed by law for selling without a license.

§ 6. Act to be in force four years, and to the end of the next session.

\*By the 4 Wm. IV. c. 50, the above act of the \*2 Wm. IV. c. 20, is continued and made permanent.

\*By the 4 Wm. IV. c. 18, entitled "an act to prevent the consumption of spirituous liquors in shops," it is enacted by § 1, that no licensed shopkeeper shall allow any wine, brandy, rum, or other spirituous liquors sold by him, to be consumed within his shop, or within the building of which such shop is part. By § 2, under the penalty of £5, to be recovered before three justices of the peace, upon the oath of one witness, (not the informer) with costs, and to be applied in the same manner as the penalty for selling by retail without license. § 3. And any purchaser consuming the same in such shop or building, shall be liable to the same penalty, recoverable in the same manner. § 4. Exempts such persons as to the justices shall appear not to have been *intentionally* guilty of the offence. § 5. Prosecution to be within six calendar months. § 6. This act to continue in force four years, and to the end of the next session, and is made permanent by the \*2 Vic. c. 26.

By the \*3 Vic. c. 22, § 2, the duty on shopkeepers' licenses is increased to £7 10s. and to the like sum for steamboat licenses by \*3 Vic. c. 20, § 7. A shopkeeper in this province may recover for spirituous liquors sold in less quantities than to the value of 20s. at a time.—*Leith v. Willis, East 8, 10, 4, Com. on D. p. 79.*

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*Information for selling less than one quart.—Penalty, £20. See 40 Geo. III. c. 4.*

County of —, } Be it remembered, that on the — day of —, to wit, } in the year of our Lord —, at —, in the said county, C. D. of —, in the county aforesaid, labourer, who as well for our sovereign lady the Queen as for himself, doth prosecute in this behalf, personally cometh before us, three of her Majesty's justices of the peace for the said county, and informeth us, that A. B. late of —, in the said county, merchant, being a shopkeeper duly licensed to sell wine, brandy, rum, and other spirituous liquors by retail, within the space of six calendar months now last past, to wit: on the — day of —, in the year aforesaid, at the township aforesaid, in the county aforesaid, did sell and vend unto one E. F. a certain quantity of [wine, brandy, or rum, &c.] in less quantity than one quart, to wit: one pint of [wine, &c.] contrary to the form of the statute, &c. (concluding as in the form given in p. 376).

See also title "Summons."

**Conviction.**

In the general form given by the 2 W. IV. c. 4, p. 200.

N. B.—The information should not be upon oath.

*Information against a Shop-keeper for allowing Spirituous Liquors to be consumed within his premises. Penalty, £5. 4 W. IV. c. 18.*

[Commencement as before]—That A. B., late of —, in the said county, being a shop-keeper duly licensed to sell wine, brandy, rum and other spirituous liquors, within the space of six months now last past—to wit, on the — day of —, in the year aforesaid, knowingly, willingly and intentionally, did allow a certain quantity—to wit, one pint of [wine, brandy, &c.], parcel of one quart of [wine, brandy, &c.] which he the said A. B. had then immediately before—to wit, on the day and year last aforesaid, at the township aforesaid, in the county aforesaid—sold and delivered to one G. H., to be drunk and consumed within the shop of him the said A. B., situate at the township aforesaid, in the county aforesaid, by him the said G. H. the purchaser thereof, contrary to the statute, &c. [Conclude as in the last form.]

*Information against a Purchaser, under the same statute. Penalty, £5.*

[Commencement as before]—That G. H., late of —, in the said county, having on the — day of —, in the year aforesaid, purchased of and from one A. B., late of the same place, being a shop-keeper, duly licensed to sell wine, brandy, rum and other spirituous liquors, a certain quantity—to wit, one quart of wine, afterwards and within the space of six calendar months, now last past—to wit, on the day and year last aforesaid, at the township aforesaid, in the county aforesaid—did consume one pint of wine, parcel of the said wine so purchased by him as aforesaid in the shop of him the said A. B. there situate, without the permission of him the said A. B., contrary to the form of the statute, &c. [As before.]

## 618 Soldiers.—Standard Measure.

### SOLDIERS.

By stat. 2 & 3 Anne, intituled, "An act for punishing mutiny, desertion and false musters, and for better payment of the army, and their quarters," &c. it is enacted, that if any officer or soldier in her Majesty's army shall, either upon land, out of England, or upon sea, hold correspondence with any rebel or enemy of her Majesty, or give them advice or intelligence, either by letters, messages, signs or tokens, or any manner of way whatsoever, or shall treat with such rebels or enemies, or enter into any condition with them, without her Majesty's license, or license of the general, lieutenant-general or chief commander, then every such person so offending shall be deemed and adjudged to be guilty of high treason, and suffer such pains and penalties as in case of high treason.

\*By 3 W. IV. c. 4, intituled, "An act to reduce the number of cases in which capital punishment may be inflicted," &c. it is enacted by § 14, that nothing in this act shall affect any of the provisions of the 2 & 3 Anne.

See also title "Desertion."

### STANDARD MEASURE.

\*By 4 G. IV. c. 16, § 1, the \* 92 G. III. c. 3, is repealed. § 2. An appropriation of £75 sterling is made for obtaining a complete set of weights and measures according to the standard in England; the same to remain in charge of the Provincial Secretary—§ 3, who shall furnish each district with a true standard of durable materials, when requested, and at the cost of the district.

\*By 5 W. IV. c. 7, it is enacted, that after the passing of this act the following rates shall be the standard weight, which in all cases shall be allowed to be equal to the Winchester bushel, viz. :—

Wheat.....	Sixty pounds.
Indian Corn.....	Fifty-six pounds.
Rye.....	Fifty-six pounds.
Peas.....	Sixty pounds.
Barley.....	Forty-eight pounds.
Oats.....	Thirty-four pounds.
Beans.....	Fifty pounds.
Timothy and Clover Seeds.....	Sixty pounds.

*Provided always,* That the effect of any contract made before the passing of this act shall not be varied by anything herein contained. § 2. Every sale or delivery of any description of grain or pulse, in this act mentioned, which shall be hereafter made, and in every contract for the sale and delivery of any such grain or pulse in the bushel, shall be taken and intended

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to mean the *weight* of a bushel, as regulated by this act, and not a bushel in measure, or according to any greater or less weight, unless the contrary shall be expressed.

See *post* title "Weights and Measures."

# STATUTE LABOUR.

By 12 Vic. c. 61, § 31, township municipalities are empowered to make by-laws (a) to enable landholders to compound for statute labour for any term not exceeding *five* years, at any rate not exceeding 2s. 6d. for each day's labour; and for enforcing the performance of statute or road labour, or payment of a commutation money therefor; and for imposing and collecting penalties and fines not exceeding in any case £5 currency, and reasonable punishment by imprisonment, not exceeding twenty days for the breach of any such by-laws.

§ 219. All acts and parts of acts and provisions of law of the parliament of this province, or of the late province of Upper Canada; and all acts, by-laws, rules and regulations thereupon passed by any township meeting, district council, board of police, town or city council in Upper Canada, in force in Upper Canada immediately before the time when this act shall come into force (1st January 1850), in so far as the same may be inconsistent with or contradictory to the provisions of this act, or which may make any provisions in any manner provided for by this act, other than such as is hereby made in such matter, shall be and they are hereby repealed.

By the General Assessment Act, 13 & 14 Vic. c. 67, § 22, every male inhabitant of any city, incorporated town or village, of the age of 21, and not over 60, not otherwise assessed or exempted by law, shall, instead of statute labour, be taxed yearly *ten* shillings; and every male inhabitant of any township, of the ages aforesaid, shall be liable to *two* days' statute labour on the roads in the township; and every party on the assessment roll shall, if the property be assessed

At not more than £50, .....	be liable to	2 days' labour.
At more than .. 50, but not more than £100..	to	3 do.
At more than .. 100, but not more than 150..	to	4 do.
At more than .. 150, but not more than 200..	to	5 do.
At more than .. 200, but not more than 300..	to	6 do.
At more than .. 300, but not more than 400..	to	7 do.
At more than .. 400, but not more than 500..	to	8 do.
At more than .. 500, but not more than 600..	to	9 do.
At more than .. 600, but not more than 800..	to	10 do.
At more than .. 800, but not more than 1000..	to	12 do.

(a) See *post* title "Townships."

## 620 **Stills.—Summary Conviction.**

And for every £200, above £1000, *one* day; unless the municipality of such township shall direct by by-law a sum of money to be paid in commutation of such labour: provided, that the municipality may by by-law reduce or increase the number of days' labour at their discretion: and provided, that if there be no distress sufficient to satisfy the said sum of *ten* shillings, and the expense of the warrant of distress, the defaulter may be committed to the common gaol of the county for a period not exceeding *six* days, unless the amount and costs be sooner paid. § 23. Non-residents' statute labour to be commuted at 2s. 6d. per diem, and collected as other taxes. See title "By-Laws," for the forms of proceedings for penalties.

### **STILLS.**

See *ante* title "Distillers."

### **SUMMARY CONVICTION.**

By the 4 & 5 V. c. 24, § 10, in all cases of summary conviction, persons accused shall be admitted to make their full answer and defence, and to have all witnesses examined and cross examined by counsel or attorney.

*Under the 4 & 5 V. c. 25.*

By this statute, § 23, having unlawful possession of wrecked property; § 24, or offering same for sale; § 30, stealing any dog, beast, or bird, not being the subject of larceny at common law; § 31, stealing, cutting, breaking, rooting up, or otherwise destroying or damaging with intent to steal any tree, sapling, or shrub, or any underwood; § 32, or any live or dead fence, or any post, pale, or rail set up as a fence, or any stile or gate; § 34, stealing, damaging, or destroying with intent to steal, any tree, sapling, shrub, bush, plant, root, fruit or vegetable production, in any garden, orchard, nursery ground, hot-house, green-house, or conservatory, renders the offender or offenders, liable to certain penalties, to be enforced by summary prosecution, for the particulars of which in detail the reader is referred to their respective titles in the index. § 55. Any person found committing any offence punishable by indictment, or summary conviction under this act, may be immediately apprehended, *without a warrant*, by any peace officer, or by the *owner of the property* on or with respect to which the offence shall be committed, or by the *servant* of any person authorised by such owner, and forthwith taken before some neighbouring justice, to be dealt with according to law. § 56. The prosecution of any offence punishable on summary conviction under this act, shall be commenced within three

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calendar months after the commission of the offence, and not otherwise; and the evidence of the party aggrieved shall be admitted in proof of the offence. § 57. Offenders under this act, being charged on oath of a credible witness, to be summoned by any justice, and on default of appearance (upon proof of due service of summons by delivering same to him personally, or by leaving same at his usual place of abode) such justice may determine the case *ex parte*, or issue his warrant for apprehending such person, and bringing him before himself or some other justice or justices; or the justice may, if he think fit, issue such warrant without any previous summons (unless otherwise specially directed,) and the justice or justices before whom the party shall appear, or be brought, shall hear and determine the case. § 58. Forfeitures to be paid to the owners of property stolen or injured (the value to be assessed by the convicting justices,) except where the party aggrieved shall have been examined as a witness, and in that case, or where the aggrieved party is unknown, such sum to be applied as a *penalty*: *Provided*, that when several offenders are each adjudged to pay the amount, in every such case no further sum shall be paid to the party aggrieved than that which shall be forfeited by one of such offenders, and the residue shall be applied in the same manner as any penalty imposed by a justice of the peace is hereinbefore directed to be applied. § 59. If the amount with costs shall not be paid upon conviction, or within such period as shall be appointed, it shall be lawful for the convicting justice or justices (unless where otherwise specially directed); to commit the offender to the common gaol or house of correction, to be imprisoned *only*, or imprisoned and *kept to hard labour*, according to the discretion of the justice or justices, for any term not exceeding *two* calendar months, where the amount with costs shall not exceed £5, and for any term not exceeding *six* calendar months, where the amount with costs shall exceed £5, and not exceed £10, (a) unless sooner paid. § 60. In case of a *first* conviction, the justice may discharge the offender, upon his making such satisfaction to the party aggrieved for damages and costs, or either of them, as shall be ascertained by such justice or justices. § 61. The governor empowered to pardon any person imprisoned under this act. § 62. Conviction and punishment under this act to be a bar to any other proceedings. § 63. Form of conviction to be as follows:—

“Be it remembered, that on the — day of — in the year of our Lord — at — in the district of — (as the case may be) A. O. is

(a) The act makes no provision for sums exceeding £10.



## Summary Conviction.

convicted before me, J. P., one of her Majesty's justices [or before us J. P. and S. L. justices] of the peace for the said district, for that he, the said A. O. did (*specify the offence and the time and place when and where the same was committed, as the case may be, and on a second conviction, state the first conviction*) and I, the said J. P. [or, we, the said J. P. and S. L.] adjudge the said A. O. for his said offence to be imprisoned in the — [or to be imprisoned in the — and there kept to hard labor] for the space of — [or, forfeit and pay — *here state the penalty actually imposed, or state the penalty and also the value of the articles stolen, embezzled or taken, or the amount of the injury done, as the case may be*] and (*in any case where costs shall be awarded*) also pay the sum of — for costs, and in default of immediate payment of the said sum [or sums] to be imprisoned in the — or to be imprisoned in the —, and there kept to hard labour, for the space of —, unless the said sum [or sums] shall be sooner paid, [or, and I or we]; also that the said sum [or sums] shall be paid by the said A. O. on or before the — day of — that the said sum of — (*i. e. the penalty only*) shall be paid to me (or us, the convicting justice or justices) and that the sum of — (*i. e. the value of the articles stolen, or the amount of the injury done*) shall be paid to C. D. (*the party aggrieved, unless he is unknown, or has been examined in proof of the offence, in which case state the fact, and dispose of the whole like the penalty as before*) and (*if the justice or justices shall think proper to award the complainant his costs*) I [or we] order that the sum of — for costs shall be paid to C. D. [*the complainant*]. Given under my hand and seal [or, our hands and seals] the day and year first above mentioned."

§ 64. One justice may receive the original information, and issue the summons or warrant to appear before two or more justices; and after examination upon oath, and adjudication by any such two justices, the subsequent proceedings respecting the penalty, fine, imprisonment, costs, or other matter relating to the offence, may be enforced by either of said justices, or by any other justice for the same district, county, city, town, or place; and when the original complaint or information shall be made to any justice different from the convicting justices, the form of conviction shall be made conformable.

§ 65. When the conviction (a) shall exceed £5, or the imprisonment one calendar month, or the conviction shall take place before one justice only, the defendant may appeal to the next general quarter sessions which shall be holden not less than twelve days after the day of conviction, upon giving to the complainant a notice in writing of such appeal, and of the cause and matter thereof, within *three* days after conviction, and seven clear days before the sessions; and shall either remain in custody until the sessions, or enter into recognizance

(a) See 13 & 14 Vic. c. 84, which now gives the right to appeal in all cases.

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with two sufficient sureties, before a justice of the peace, conditioned to appear at the sessions, and try such appeal, and abide the judgment of the court thereupon, and pay such costs as shall be awarded by the court; and on such being given, and recognizance entered into, the justices shall liberate such person if in custody; and the sessions shall hear and determine such appeal, and make such order, with or without costs to either party, as to the court shall seem meet; and in case of the dismissal of the appeal, or affirmative of the conviction, the court shall adjudge the offender to be punished according to the conviction, and pay such costs, if any, as shall be awarded; and shall, if necessary, issue process to enforce such judgment. § 66. Every justice before whom conviction shall be had under this act, shall transmit such conviction to the next general quarter sessions, to be kept among the records; and upon any prosecution for a subsequent offence, a copy of such conviction, certified by the proper officer of the court, or proved to be a true copy, shall be sufficient evidence to prove such former conviction. Prosecutions against any person acting under this act to be commenced within six calendar months, and notice in writing of such action, and of the cause thereof, to be given to the defendant one calendar month before commencement; defendant may plead the general issue, and give this act and special matter in evidence. Usual provisions as to costs. § 69. All fines, &c., imposed by this act to be current money of this province. § 70. All former acts repugnant to this act repealed.

*Under the statute 4 & 5 Vic. c. 26.*

By § 20 of this statute, maliciously destroying or damaging any tree, sapling or shrub, or any underwood, wheresoever the same may be respectively growing, to the value of *one shilling*; § 21, or maliciously destroying, or damaging with intent to destroy, any plant, root, fruit or vegetable in any garden, &c.; § 22, or any cultivated root or plant used for the food of man or beast, or for medicine, or for distilling, or dyeing, &c.; § 23, or maliciously throwing down, or destroying, &c., any fence, or any wall, stile or gate; § 24, or wilfully or maliciously committing any damage, or injury, or spoil, to or upon any real or personal property whatsoever for which no previous remedy is provided, also subjects the offender to the particular penalties mentioned, and for which the reader is referred to the index. § 25. Every punishment and forfeiture by this act imposed on any person maliciously committing any offence, whether punishable by indictment or upon summary conviction, shall equally apply and be enforced, whether the offence be com-

mitted from malice conceived against the owner of the property or otherwise. § 28. Any person found committing any offence punishable by indictment or summary conviction, may be immediately apprehended, *without a warrant*, by any peace officer, or by *the owner of the property* injured; or his *servant*, or any person authorised by him, and forthwith taken before some neighboring justice, to be dealt with according to law.

§ 29. Prosecutions by summary conviction under this act to be commenced within *three calendar months* after the offence committed, and not otherwise; and the evidence of the party aggrieved shall be admitted in proof of the offence. § 30. Of-

fenders charged on the oath of a credible witness to be summoned by any justice; and in default of appearance (upon proof of due service of summons, by personal delivery, or by leaving the same at offender's usual place of abode), such justice may determine the case *ex parte*, or issue his warrant for the apprehending such person and bringing him before himself or some other justice; or the justice may, if he think proper, issue such warrant without any previous summons (unless otherwise specially directed); and the justice before whom the party shall appear or be brought shall hear and determine the case. § 31. Any person who shall aid, abet, counsel, or procure the commission of any offence punishable by summary conviction under this act, shall, on conviction before a justice of the peace, be liable for every such offence of aiding, &c., to the same forfeiture and punishment as the principal offender. § 32. Forfeiture for the amount of any injury done (to be assessed by the convicting justice) to be paid to the party aggrieved if known, except where such party shall have been examined in proof of the offence; and in that case, or where the party aggrieved is unknown, the same to be applied as a penalty; and every sum imposed as a penalty, whether in addition to such amount or otherwise, shall be paid to the convicting justice: *Provided*, that where several offenders are each adjudged to pay the amount, in every such case no further sum shall be paid to the party aggrieved than that which shall be forfeited by one of such offenders, and the residue shall be applied in the same manner as any penalty is by law directed to be applied. § 33. If the amount, with costs, shall not be paid upon conviction, or within such period as shall be appointed, it shall be lawful for the convicting justice (unless where otherwise specially directed) to commit the offender to the common gaol or house of correction, to be imprisoned *only*, or imprisoned and *kept to hard labor*, according to the discretion of the justice, for any term not exceeding *two calendar months*, where the amount, with costs, shall not

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exceed £5; and for any term not exceeding four calendar months, where the amount, with costs, shall be more than £5; and not exceed £10; and for any term not exceeding six calendar months, where the amount, with costs, shall exceed £10, unless sooner paid. § 34. In case of a first conviction, the justice may discharge the offender, upon his making such satisfaction to the party aggrieved, for damages and costs, or either of them, as shall be ascertained by such justice. § 35. The governor empowered to pardon any person imprisoned under this act. § 36. Conviction and punishment under this act to be a bar to any other proceedings. § 37. Form of conviction to be as follows:

"Be it remembered that on the — day of —, in the year of our Lord —, at —, in the district [or city, &c. — as the case may be] A. O. is convicted before me, J. P., one of her Majesty's justices of the peace for the said district [or city, &c.] for that he the said A. O. did (specify the offence, and the time and place when and where the same was committed, as the case may be) and I the said J. P. adjudge the said A. O. for his said offence, to be imprisoned in the — (or to be imprisoned in the —, and there kept to hard labour) for the space of —, (or) I adjudge the said A. O. for his said offence to forfeit and pay — (here state the penalty actually imposed, or state the penalty and also the amount of the injury done, as the case may be) and also to pay the sum of — for costs, and in default of immediate payment of the said sums, to be imprisoned in the — (or, to be imprisoned in the — and there kept to hard labour) for the space of —, unless the said sums shall be sooner paid; (or, and I order that the said sums shall be paid by the said A. O. on or before the — day of —) and I direct that the said sum of — [i. e. the penalty only] shall be paid to me the convicting justice, and that the said sum of — [i. e. the sum for the amount of the injury done] shall be paid to C. D. (the party aggrieved, unless he is unknown, or has been examined in proof of the offence, in which case state that fact and dispose of the whole like the penalty as before); and I order that the said sum of — for costs, shall be paid to — (the complainant).

"Given under my hand and seal the day and year first above mentioned."

§ 38. Where the conviction (a) shall exceed £5, or the imprisonment one calendar month, or the conviction shall take place before one justice only, the defendant may appeal to the next general quarter sessions which shall be holden not less than twelve days after the day of conviction, upon giving to the complainant a notice in writing of such appeal, and of the cause and matter thereof, within three days after such conviction, and seven clear days at the least before the sessions, and shall either remain in custody until the sessions, or enter into a recogni-

(a) The right to appeal is now general in all cases under the 13 & 14 Vic. c. 84.

zance, with two sufficient sureties, before a justice, conditioned personally to appear at the sessions and try such appeal, and abide the judgment of the court thereupon, and pay such costs as shall be awarded by the court; and on such being given, and recognizance entered into, the justice shall liberate such person if in custody: and the sessions shall hear and determine such appeal, and make such order, with or without costs to either party, as to the court shall seem meet; and in case of dismissal of the appeal, or affirmance of the conviction, the court shall adjudge the offender to be punished according to the conviction, and pay such costs as shall be awarded; and shall, if necessary, issue process to enforce such judgment.

§ 39. Every justice before whom any conviction shall be had under this act, shall transmit such conviction to the next general quarter sessions, to be kept among the records; and upon any prosecution for a subsequent offence, a copy of such conviction, certified by the proper officer of the court, or proved to be a true copy, shall be sufficient evidence to prove such former conviction.

§ 40. Prosecutions against any person acting under this act to be commenced within six calendar months, and notice in writing of such action, and of the cause thereof, to be given to the defendant one calendar month before commencement. Defendant may plead the general issue, and give this act and special matter in evidence. Usual provision as to costs.

§ 41. All fines, &c. imposed by this act to be current money of this province.

For summary conviction for assault, see p. 60; and for form of conviction, see p. 63.

The common forms of "Information," "Summons," and other proceedings, which will be found under their respective titles, may be easily adapted for any proceeding under this act. The forms of conviction, &c., embodied in the act must, however, be used.

*Notice of Appeal, to be given within three days after conviction and seven clear days before the sessions.*

Mr. A. B. to the Hon. Justices of the Peace for the County of N. B.

Take notice, that I, C. D. intend at the next general quarter sessions of the peace to be holden in and for the county of —, at — in the said county, to appeal against a certain conviction of me the said C. D. by J. P., esquire, one of her Majesty's justices of the peace for the said county, for having, as is therein and thereby alleged, [on —, &c. at —, &c., stating the offence] and that the cause and matter of such appeal are, [that I am not guilty of the said offence], and that [stating any other causes of appeal the party may have], of all which premises you [and each of you] are hereby desired to take notice. Dated this — day of —, &c. Witness E. F. C. D.

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## Recognizance thereon

May be in the form given in ante p. 28.

## SUMMONS.

A summons is the usual process issued by justices to procure the attendance of a person accused, where the offence is between party and party, and not of an aggravated nature; but where the offence is of a higher nature, as felony, breach of the peace, &c., and in cases where the king is a party, it may be proper to issue a warrant in the first instance. In petty assaults, though justices are authorised to issue a warrant on complaint on oath of the party, yet a summons is more advisable, as in many cases it is found that there is little or no pretence for the accusation.—*Paley*, 18. A summons may be either directed to the party, or to a constable, requiring him to summon the party.—*Paley*, 18. Where the summons is directed to the constable, or a third person, a *copy* of it plainly and legibly written on paper, should be served personally upon the party accused; if directed to the party himself, the *original* should be personally served upon him, and a copy of it kept by the party serving it. It should be personally served upon the party accused, unless where personal service is expressly dispensed with by statute.—*Arch. Con.* 97. The justice should fix the time of day when the party should attend; for though the accused is bound (if the summons is to attend a petty sessions) to wait until the magistrate can attend to the complaint, yet it is reasonable to appoint a time *when* the complaint can probably be heard.—*Toone*, 858. In general, a summons may be granted without the oath of the complaining party; but in some cases the oath is indispensable, as in complaints between masters and servants, &c., and in all cases where so directed by statute; and if the complaint is on oath, it should be so stated in the summons.—*Toone*, 858; but an information for a penalty need not be upon oath, unless the statute requires it.—*S. T. R.* 508. Where a particular form of notice or summons is required by a statute, that must be strictly pursued.—*Paley*, 18. Where the defendant, after being duly served with the summons, neglects to appear before the magistrate, he may be in that case convicted in his absence.—*R. v. Simpson*, 1 *Str.* 44; 10 *Mod.* 248, 341, 370; but proof should previously be given of the service of the summons.—*Paley*, 21. And see 5 *G. II. c.* 25, § 7; 6 *G. II. c.* 9, § 22. In a case where a defendant was convicted without a previous summons, the Court of King's Bench granted a criminal information against the justice.—*R. v. Venables*, 2 *Ld. R.* 1407. The defendant should be allowed a reasonable time for his appearance, for a summons to appear

immediately, or upon the same day, would be bad, unless cured by the defendant's appearance.—*R. v. Mallison*, 2 Burr. 681; *R. v. Johnson*, 1 Str. 261.

*Summons, when directed to the Constable. (Archbold.)*

County of —, } To the constable of —.  
to wit.

Whereas A. B. of —, in the county aforesaid, labourer, hath this day been charged before me, J. P., one of her Majesty's justices of the peace for the county aforesaid, on the oath of a credible witness, for that he the said A. B., on the — day of —, in the year of our Lord 18—, at — in the said county, did [here state the offence]. These are, therefore, to require you forthwith to summon the said A. B. to appear before me, at —, in the said county, on — next, the — day of — instant, at the hour of — in the forenoon of the same day, to answer the said charge, and to be further dealt with according to law; and be you then there to certify what you shall have done in the premises. Herein fail you not.

Given under my hand and seal, the — day of —, in the year of our Lord 18—.

*Oath of the service of such Summons.*

County of —, } The within named — constable of —, maketh  
to wit. } oath and saith, that he did, on — the — day  
of —, personally serve the within named A. B. with a true copy of  
the within written summons. Sworn, &c.

*Summons, when directed to the Party. (Archbold.)*

County of —, } To A. B. of —, in the said county, yeoman.  
to wit.

Whereas you have this day been charged before me, J. P., esq., one of her Majesty's justices of the peace for the county aforesaid, on the oath of one credible witness, for that you, on the — day of — last, at — in the county aforesaid, did &c. (here state the offence as in the information). These are therefore to require you to appear before me at —, in the said county, on — next, the — day of —, instant, at the hour of — o'clock in the — noon of the same day, to answer the said charge, and to be further dealt with according to law. Herein fail you not. Given under my hand and seal, the — day of —, in the year of our Lord —.

*Oath of the service of such Summons.*

County of —, } C. D. of —, constable of the said township,  
to wit. } maketh oath and saith, that he did on — the  
— day of —, instant, personally serve A. B. of —, yeoman,  
with the original summons, under the hand and seal of J. P., esquire,  
one of her Majesty's justices of the peace for the said county, of which  
the within is a true copy.

*Summons of a Witness to be examined.*

County of —, } To the constable of —.  
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Majesty's justices of the peace in and for the said county, that [*here sets the offence committed, and by whom*] and that A. B. of — is a material witness to be examined concerning the same. These are therefore to require you to summon the said A. B. to appear before me at —, in the said county, on the — day of —, at the hour of — in the — noon of the same day, to testify to the truth, according to the best of his knowledge concerning the premises. Given under my hand and seal, the — day of —, 18—.

## SURETY FOR GOOD BEHAVIOUR.

A man may be compelled to find sureties of the peace, both for the good behaviour and for the peace; and yet the good behaviour includeth the peace, and he that is bound to the good behaviour, is therein also bound to the peace.—*Dalt. c. 122.* The authority under which a justice of the peace may require surety for the good behaviour, is founded upon the statute 34 Ed. 3, c. 1; and the commission of the peace. No one ought to be bound to the good behaviour for any rash, quarrelsome, or unmannerly words, unless they either tend to a breach of the peace, or to scandalise the government, by abusing those who are intrusted by it with the administration of justice, or to deter an officer from doing his duty; and therefore, it seems that he who barely calls another "rogue," or "rascal," "liar," or "drunkard," ought not for such cause to be bound to the good behaviour. However, says Mr. Hawkins, I cannot find any certain or precise rules for the direction of the magistrate in this respect, and therefore am inclined to think that he has a discretionary power to take such surety of all those whom he shall have just cause to suspect to be dangerous, quarrelsome, or scandalous; as of those who sleep in the day and go abroad in the night; and of such as keep suspicious company; and of such as are generally suspected to be robbers, and the like; and of eaves-droppers; and of common drunkards; and all other persons whose misbehaviour may reasonably be intended to bring them within the meaning of the statute; as persons of evil fame, who being described by an expression of so great a latitude, seem in a great measure to be left to the judgment of the magistrate. But if he commit one for want of sureties, he must shew the cause with sufficient certainty.—1 *Haw. 132.*

Mr. Dalton, (who wrote towards the latter end of the reign of king James the first,) in order to determine the same with some kind of certainty, has inserted the following, as instances in which sureties for the good behaviour may be granted, viz.:

Against, 1. Rioters. 2. Barrators. 3. Common quarrellers and common breakers of the peace. 4. Such as lie in wait

to rob; or shall be suspected to lie in wait to rob; or shall assault or attempt to rob another; or shall put passengers in fear or peril; or shall be generally suspected to be robbers on the highway. 5. Such as are like to commit murder, homicide, or other grievance to any of the king's subjects in their bodies. 6. Such as shall practise to poison another; one instance of which may be the poisoning of their food; thus Mr. Dalton granted a warrant for the good behaviour against one who had bought ratsbane, and mingled it with corn, and then cast it amongst his neighbours' fowls, whereby most of them died. 7. Such as in the presence of the justice shall misbehave himself in some outrageous manner of force or fraud. 8. Such as are greatly defamed for resorting to houses suspected to maintain adultery, or incontinency. 9. Maintainers of houses commonly suspected to be houses of common bawdry. 10. Common whoremongers and common whores. 11. Night-walkers, that shall eaves-drop men's houses; or shall cast men's gates, carts, or the like, into ponds; or commit other outrages or misdemeanors in the night; or shall be suspected to be pilferers, or otherwise like to disturb the peace; or that be persons of ill behaviour, or of evil fame or report generally; or that shall keep company with such, or with any other suspicious persons in the night. 12. Suspected persons who live idly, and yet fare well, or are well apparelled, having nothing whereon to live, unless, upon examination, they shall give a good account of such their living. 13. Common gamesters. 14. Such as raise hue-and-cry without cause. 15. Libellers. 16. Putative father of a bastard child.\* 17. Such as persuade or procure the putative father of a bastard child to run away. 18. Such as abuse a justice's warrant, or shall abuse him, or the constable in executing his office. Nay, it seemeth, he says, that he who shall use words of contempt, or contrary to good manners, against a justice of the peace, though it be not at such a time as he is executing his office, yet he shall be bound to his good behaviour. 19. Such as charge another before a justice with felony, riot, or forcible entry, and yet will not prosecute or give evidence. 20. In general, whatsoever act or thing is in itself a misbehaviour, is cause sufficient to bind such an offender to the good behaviour.—*Dalt. c. 124.*

To which may be added—21. Forcibly entry.—*1 Haw. 124.* 22. The author of any writing full of obscene ribaldry.—*1 Haw. 195.* 23. For striking a person in the presence of the justices.—*Crom. 124.* 24. For threatening so as to deter witnesses from attending a court of justice.—*Id. 125.*

\* There being no poor-laws in this province, an offender of this sort would not, probably, be liable.

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*For what it shall be forfeited.*

Mr. Hawkins says, it has been laid down as a general rule, that whatever will be a good cause to bind a man to his good behaviour, will forfeit a recognizance for it; but this has since been denied, and indeed seems to be by no means maintainable; because the statute, in ordering persons of *evil fame* to be bound in this manner, seems in many places chiefly to regard the prevention of that mischief, which they may justly be suspected to be likely to do; and in that respect requires them to secure the public from that danger which may probably be apprehended from their future behaviour, whether any actual crime can be proved upon them or not; and it would be extremely hard in such cases to make persons forfeit their recognizance who may yet justly be compelled to give one, as those who keep suspicious company; or those who spend much money idly, without having any visible means of getting it honestly; or those who lie under a general suspicion of being rogues and the like.—1 *Haw.* 132, 133. However, it seems that such a recognizance shall not only be forfeited for such actual breaches of the peace, for which a recognizance for the peace may be forfeited, but also for some others for which such a recognizance cannot be forfeited; as for going round with great numbers to the terror of the people, or speaking words tending to sedition; and also, for all such actual misbehaviours which are intended to be prevented by such a recognizance, but not for barely giving cause of suspicion of what may perhaps never happen.—1 *Haw.* 133.

For the forms requisite under this title, see "Articles of the Peace," the forms in which may be easily adapted to any case that may arise under this head, observing throughout to confine the subject matter to "surety of the good behaviour," omitting the words "surety for the peace."

## SURVEYORS.

See *ante* titles "Highways," "Land Surveyors."

## SWEARING.

By stat. 19 G. II. c. 21, the following penalties are imposed on offenders who shall profanely curse or swear, and be convicted thereof on confession, or oath of one witness, before one justice, viz.: every day-labourer, common soldier or common seaman, *one shilling*; every other person under the degree of a gentleman, *two shillings*; and every person of or above the degree of a gentleman, *five shillings*; and for a second offence after conviction, *double*; and for every subsequent offence after conviction, *treble*; which said penalties shall go to the poor of

## 632 Telegraph.—Theftbote.—Threats.

the parish. If such person shall curse or swear in the presence and hearing of a justice, he shall convict him without any other proof.

And by provincial statute 12 Vic. c. 81, power is given to the municipal authorities incorporated under that act to make by-laws for, amongst other things enumerated, preventing vice, drunkenness, *profane swearing*, obscene language, and any other species of immorality and indecency in the streets, or other public places.

See titles "Incorporated Villages" and "By-Laws."

### TAVERN LICENSES.

See title "Inns and Innkeepers," *ante* p. 376.

### TELEGRAPH.

By 13 & 14 Vic. c. 31, if any person shall wilfully or maliciously cut, break, destroy or injure any instrument, cap, wire, post or other erection, used for or by any line of electro-magnetic telegraph; now or hereafter to be in operation in this province; or in any manner impede or obstruct the action and operation of such line; such person shall be punishable by imprisonment for not less than five days, nor more than thirty days, or by fine not exceeding £10, or by both, according to the discretion of the presiding magistrate: and any justice of the peace in any parish, village, city, town or county where the offence was committed, or in which the offender may be found, shall have jurisdiction, and the proceedings be in a summary way; and the fine, if not forthwith paid, may be levied with costs of prosecution by warrant of distress against the offender's goods and chattels; or such offender may (in the discretion of the magistrate), whether imprisonment be or be not part of the sentence, be imprisoned for a period not exceeding thirty days in addition to and after the expiration of any other imprisonment making part of his sentence, unless such fine and all expenses of prosecution be sooner paid; and all such fines shall belong to the aggrieved and complaining party.

See *ante* p. 200, for form of "Conviction."

### THEFTBOTE.

Theftbote (from the Saxon *theft* and *bote*, boot or amends) is, where one not only knows of a felony, but takes his goods again, or other amends not to prosecute.—1 *Haw.* 125.

See *ante* title "Compounding Felony," p. 176.

### THREATS.

If one man threaten another, to deter him from doing some lawful act, or to compel him to do some unlawful one, or with

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intent to extort money from him, or obtain any other benefit (whether real or imaginary) to the person who makes use of the threat; this has always been considered a misdemeanor at common law. Thus, to threaten a plaintiff for suing a defendant, or a counsellor or attorney for being employed against any party in a suit; a juror for his verdict; or a gaoler, or other ministerial officer, for keeping a prisoner in custody and properly executing his duty, are offences for which the party may be indicted and punished by fine or imprisonment.—2 *Inst.* 141; 4 *Bl. Com.* 126; 2 *Chit. C. L.* 149.

With respect to *threats* of personal violence, or any other threats by which a man is put in fear, and by means of which money or other property is actually extorted from him, the 4 & 5 Vic. c. 25, contains the following enactments:—Whoever shall accuse, or threaten to accuse, any person of the abominable crime of buggery, committed either with mankind or with beasts, or any assault with intent to commit the said abominable crime, or of any attempt or endeavour to commit the said abominable crime, or of making or offering any solicitation, persuasion, promise or threat, to any person whereby to move or induce such person to commit or permit the said abominable crime, with a view to extort, and shall by intimidating such person by such accusation or threat, extort or gain from such person any property, shall be guilty of felony, and being convicted shall be liable at the discretion of the court to be imprisoned at hard labour in the Provincial Penitentiary for life, or any term not less than seven years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years.

§ 11. Whoever shall with menaces, or by force, demand any chattel, money or valuable security of any person, with intent to steal the same, shall be guilty of felony, and being convicted shall be liable to be imprisoned for any term not exceeding three years.

§ 12. If any person shall knowingly send or deliver any letter or writing, demanding of any person with menaces and without any reasonable or probable cause, any chattel, money or valuable security; or if any person shall accuse, or threaten to accuse, or shall knowingly send or deliver any letter or writing, accusing or threatening to accuse any person of any crime punishable by law with death or transportation, or of any assault with intent to commit any rape, or of any attempt or endeavour to commit rape, with a view to extort from such person any chattel, money or valuable security; every such offender shall be guilty of felony, and being convicted shall be liable at the discretion of the court to be imprisoned at hard

labour in the Provincial Penitentiary for any term not less than seven years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years. § 17. Whosoever shall steal any chattel, money or valuable security in any dwelling-house, and shall, by any menace or threat, put any one being therein in bodily fear, shall be guilty of felony, and being convicted shall be liable to be imprisoned at hard labour in the Provincial Penitentiary for any term not exceeding fourteen years, nor less than seven years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years.

*Commitment for threatening to accuse a man of a crime, with intent to extort Money.*

*Commencement as ante p. 413.)* on the — day of —, in the year of our Lord —, at — in the said county, did threaten [the said] C. D. to accuse [accuse or threaten to accuse] him the said C. D. of having [attempted and endeavoured to commit a rape upon Ann, the wife of the said A. B.] with a view to extort and gain money [chattels, money or valuable security] from the said C. D., against the form of the statute in that case made and provided. And you, the said keeper, &c. as ante p. 413 to the end.

### TOLLS.

By 7 V. c. 14. § 1, vehicles laden solely with manure brought from any city or incorporated town in Upper Canada, and employed to carry the same into the country for the purposes of agriculture, and the horse or horses, or other beasts of draught drawing such vehicle shall pass *toll free* through any turnpike-gate, or toll-gate or any turnpike road within *twenty* miles of any such city or town, as well in going as in returning if empty; and whether such turnpike road and the tolls belong to the province or to any local or municipal authority, or body of trustees or commissioners for local purposes, or to any incorporated or unincorporated company, or any other body, person or persons. § 2. All persons going to or returning from divine service on any *Sunday* or *obligatory* holiday with their own carriages, &c., shall, as also their families, &c., pass *toll free*. § 3. No vehicle, laden or unladen, horses or cattle, belonging to the proprietor of any lands divided by such turnpike road, shall be liable to toll on passing through such gate (at whatever distance from any city or town) for the sole purpose of going from one part of his lands to another: Provided the same do not proceed more than half a mile along such road either in going or in returning, for farming or domestic purposes only. § 4. This act not to extend to any toll-bridge vested in any party other than the crown.

See also title "Public Works," p. 551.



**TOWN CLERK.**

See *post* title "Township Meeting."

**TOWN REEVE.**

By 12 Vic. c. 81, § 24, township councillors at their first meeting after their annual election shall proceed to elect from amongst themselves a town reeve ; and in townships having 500 resident freeholders and householders on the collector's roll, one *deputy* town reeve for such township. § 53. One town reeve to be elected for every incorporated village, in like manner as in townships. § 77. The town council of every incorporated town shall also select from among themselves one town reeve ; and any town having 500 resident freeholders and householders on the collector's roll, a *deputy* town reeve.

By § 32 of the above act, the town reeves and deputy town reeves of the several townships, villages and towns within each county, shall constitute the municipal council for such county.

By § 108, the *town reeve* of each township and village shall be the head of the same respectively ; and by § 109, a justice of the peace within his locality.

By 13 & 14 Vic. c. 64, § 12, upon the dissolution of any union of counties, the town reeves and deputy town reeves of the *junior* county shall, until replaced by new elections, form the municipal council of such junior county.

§ 15. In case of equality of votes on the election of any town reeve, the member of such municipal corporation assessed for the highest amount on the collector's roll for the year preceding, shall have a second or *casting vote*.

**TOWNS.**

By the Municipal Act 12 V. c. 81 (as amended by (a) the 13 & 14 V. c. 64), § 61, the towns named in schedule B are incorporated with the like powers as villages, except so far as increased or modified by this act, and the same to be exercised through the town council. § 62. Three councillors to be chosen for every ward, by the male resident freeholders and householders. § 63. Elections to take place on the *first Monday in January*. § 64. The municipality, town council, or board of police, to appoint returning officers to hold the first election ; returning officers afterwards to be appointed by the town council. § 65. The collector's roll to be furnished, and qualification for town councillor to consist of real estate, or for a term of twenty-one years at least (seven unexpired) within the town, of £300 ; or tenancy from year to year, or for a term

(a) The words within the brackets [ ] show the the amendments.

of years, of real property, at a *bona fide* rental of £40 per annum or upwards; or receipt of £40 or upwards of yearly rent from real property within such town; and electors to be freeholders and householders, entered upon the roll, and residents in the ward, and assessed as proprietors or tenants for a house or land, or both, to the value of £25, and by none other. § 66. The mayor to be elected by the town councillors, on the second Monday after the election of such councillors, and to have the same powers within the town as the town reeve of a village. § 67. The town council to have the like powers as the municipality of any village. § 68. The gaol, court-house, and house of correction of the county, to belong also to the town, and the sheriff and gaoler are bound to act accordingly. § 69. A police office to be in each town, with a police magistrate in daily attendance; and in case of absence, from sickness or other cause, the mayor to attend daily, or any justice of the peace having jurisdiction within the town, at his request. § 67. The police magistrate to be appointed by the crown, and to be *ex officio* a justice of the peace for the same, as also for the county, with a salary of not less than £100 per annum, payable quarterly from the town funds. § 71. The police magistrate to have the power of suspending constables, with power to appoint others during such suspension. § 72. Offences against the by-laws to be prosecuted before the police magistrate, or if no police magistrate, then before the mayor. § 73. Town clerks to be clerks of the police offices. § 74. Incorporated towns to have each one chief constable, and one or more constables for each ward, who are to hold office during the pleasure of the council. § 75. The governor may also appoint any number of justices of the peace for any such town [but not to affect the jurisdiction of justices of the peace for the county within such town]. § 76. Oaths of office to be taken before the mayor or police magistrate. § 77. The town council to select from among themselves one town reeve; and any town having five hundred resident freeholders and householders on the collector's roll, a deputy town-reeve also for such town; who shall be members of the county council. § 78. The town council to appoint *three* assessors and *one* collector for each ward, not being of their own body; the assessor to be rated the year preceeding to the amount of £800 and upwards. § 79. Any incorporated village, containing upwards of three thousand inhabitants, may, upon petition to the municipal council of the county, be incorporated as a town: no town to be divided into less than three wards, and no ward to contain less than five hundred inhabitants: the town to be incorporated shall have the like privileges as towns in schedule B. § 80. The town

council of different the municipal officers to have any income incorporated the following

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council of such town to be composed of the councillors for the different wards, with the same powers within such ward as the municipality of any village; and the mayor and other officers to have the like powers as the town reeves and officers of any incorporated village. § 81. The town council of towns incorporated under this act are authorized to make by-laws for the following purposes, viz.:

*Town By-Laws.*

1. For establishing and regulating a police for such town; for establishing and regulating one or more alms-houses and houses of refuge for the relief of the poor and destitute; for erecting and establishing and also providing for the proper keeping of any work-house or house of correction that may hereafter be erected in and for such town; for regulating the erection of buildings, and preventing wooden buildings from being erected in thickly-built parts of such towns.

2. For the purchase of such lands as they may deem necessary, for the purpose of an industrial farm for such town, of not less than two hundred acres in extent, within such convenient distance of such town as they may deem expedient, and for erecting or building thereon such houses, buildings, yards and other inclosures, as may be deemed proper for the purposes of such farm.

3. For defraying out of the funds of such town, if necessary, the expense of lighting the same or any part thereof with gas, oil or other substances, and the performing of any kind of work required for the purpose, and for obliging the proprietors or occupiers of real property to allow such work to be done, and such fixtures placed in or about their premises as may be necessary for that purpose; such work and fixtures to be done at the expense of such town.

4. For regulating and licensing the owners of livery stables, horses, cabs, hackney-coaches, omnibuses, carts and other carriages used for hire in such town, and for establishing the rates of pay or hire, [and to compel in a summary way the prompt payment of the lawful price or hire to the owner or driver of such horses, cab, &c., by the parties hiring or using the same]; and for preventing runners, stage-drivers and others in the streets or public places from soliciting and teasing passengers and others to travel in any boat, vessel, stage or vehicle.

5. For assessing the proprietors of such real property in any such town as may be immediately benefited by such improvements, for such sum or sums as may at any time be necessary to defray the expense of making or repairing any common sewer, drain, flagging, posts or pavement in any public highway, street, square or place immediately opposite or near to such real property, and for regulating the time and manner in which such assessment shall be collected and paid.

6. For raising, levying and appropriating, at and upon the petition of two-thirds or upwards of the freeholders and householders resident in any particular street, square, alley or lane of such town, such sum or sums of money as may be necessary to defray the expense of sweeping and watering such street, square, alley or lane, by means of a special

rate to be assessed equally on the whole ratable property in such street, square, alley or lane.

7. For borrowing under the restriction and upon the security herein after mentioned, all such sums of money as shall or may be necessary for the execution of any town work within their jurisdiction and the scope of the authority by this act conferred upon them.

8. For raising, levying and appropriating such moneys as may be required for all or any of the purposes aforesaid, by means of a rate to be assessed equally on the whole ratable property in such town, according to any law which shall be in force in Upper Canada concerning rates and assessments.

9. For making all such laws as may be necessary and proper for carrying into execution the powers herein vested or hereinafter to be vested in the corporation of such town or in any department or office thereof, for the peace, welfare, safety and good government of such town, as they may from time to time deem expedient; such laws not being repugnant to this or any other act of the parliament of this province, or of the parliament of Upper Canada, or to the general laws of that part of this province: Provided always nevertheless, firstly, that no person shall be subject to be fined more than five pounds, exclusive of costs, or to be imprisoned more than thirty days, for the breach of any by-law or regulation of such town: And provided also, secondly, that no person shall be compelled to pay a greater fine than twenty pounds for refusing or neglecting to perform the duties of any municipal office when duly elected or appointed thereto.

10. For the repeal, alteration or amendment, from time to time, of all or any of such by-law or by-laws, and the making others in lieu thereof, as to them may seem expedient for the good of the inhabitants of such town.

By the 13 & 14 V. c. 64, § 15, in case of an equality of votes on the election of mayor, the member of the corporation assessed for the highest amount on the collector's roll for the preceding year, shall have a second or casting vote.

### TOWNSHIPS.

By the Municipal Act 12 Vic. c. 81, as amended by the 13 & 14 Vic. c. 64 (a), the following provisions are made in respect of townships:—

§ 2 enacts, that townships having one hundred or more resident freeholders or householders on the collector's roll for the last year shall be a body corporate, with a common seal and corporate powers, to be exercised in the name of the municipality of each township. § 3. It shall be the duty of the municipal council for each district, at a special meeting prior to the 2nd October, 1849, to attach, by by-law, townships having less than one hundred resident freeholders and householders to

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some adjacent township, and such township so attached shall, until the dissolution of such union, be known as the *junior* township, and be represented in one municipality in common with such adjacent township, which shall be known as the *senior* township; and after the 1st of January, 1850, every township newly laid out by the crown, or not having within it one hundred resident freeholders and householders on the collector's roll, and not already attached, shall, by a by-law of the municipal council of the county, be united for the purposes of this act to such adjacent township as such municipal council shall think fit, and also to some one rural ward, where such last mentioned township shall have been divided into such wards, or part of it to one of such wards and part of it to another of such wards, with a view to the representation of the freeholders and householders thereof in the municipality of such united townships, and all such townships shall, while they shall so continue united, be called the united townships of —.

§ 4. It shall be lawful for the said municipal council, if they deem it expedient, to divide such townships (including unions of townships) into rural wards, for the election of township councillors, (excluding incorporated villages, towns and cities), in such manner that the several wards in such townships shall, as regards the number of freeholders and householders entitled to vote, be as nearly equal as practicable; § 5, and to appoint a convenient place in each ward for holding the election of township councillors, and a fit and proper person to hold the first election. § 6. Copies of such by-law to be published *twice* at least in the *Official Gazette*, and at least *four* times in some public newspaper, and copies to be posted up in four most public places in each township. § 7. The municipal council also to transmit a copy of the by-law to the person appointed to hold such election for rural wards one calendar month prior thereto, and who shall hold such first election under the penalty of £10, in case of default. § 8 authorises the municipality of the township from time to time, by any by-law to be passed for that purpose, [to divide such township into several wards, or when the same shall have been previously so divided by act either of the district or county council, or of the municipality of the township, then to divide the same into several wards as aforesaid, arranging or] re-arranging the same, so as more effectually to accomplish the objects aforesaid, which division shall supersede the former; but no such by-law shall have effect unless passed by a vote of at least four-fifths of the members of such municipality. § 9. Township municipality from time to time, by by-law to be passed for that purpose, shall appoint a fit and convenient place in each ward for holding

the election of township councillors, superseding former appointments; § 10, also shall appoint annually fit and proper persons to be returning officers for the elections in such rural wards. § 11. Whenever any junior township of any such union of townships shall have within it one hundred resident freeholders and householders on the collector's roll, the municipal council of the county may, if deemed expedient, by by-law passed within the first nine calendar months of the following year, divide the same into rural wards, and fix the place for holding the first election of councillors, and appoint returning officers and otherwise provide for holding such election as nearly as may be in the manner prescribed by the 4th, 5th, 6th and 7th sections. § 12. Whenever any junior township of such union of townships shall have 100 resident freeholders and householders on the collector's roll, such junior township shall upon and after the 1st January in the year next but one thereafter be incorporated by itself, and be held and considered, as well as the other township or townships to which it was united, as separate townships. § 13. Whenever any junior township shall have such one hundred resident freeholders and householders on the roll, the municipality of such union of townships may, if deemed expedient, by by-law within the first nine calendar months of the following year, divide the remaining townships anew into rural wards, fix the place for holding the first election of councillors in each ward, and appoint returning officers and otherwise provide for such elections as nearly as may be in the manner prescribed by the 8th, 9th and 10th sections: Provided that such by-law need not be passed by two-thirds of the members, as required with respect to some particulars by the 5th section, but shall be valid if passed by a *majority*: Provided also, that such by-law shall contain a provision limiting it to come in force upon, from and after the 1st January; upon which day such union shall be dissolved, and not before. § 14. In case such new division shall not have been made in anticipation of the dissolution of such union, and any of the other townships shall in consequence be left without a sufficient number of wards for completing the number of councillors to which they shall be entitled under this act, the election of councillors for such remaining townships shall, after such dissolution, be by general vote of the qualified freeholders and householders of the remaining townships at a general township meeting for that purpose, and not by rural wards, until a new division has been made; but if, notwithstanding such dissolution, parts of the wards comprising such junior townships shall still remain, the election of township councillors shall not then be by general vote, but by wards as before. § 15. The number

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of rural wards to be five. § 16. Any township so attached to another, having within it [one hundred] resident freeholders and householders on the collector's roll, shall [for the year next but one following] the making up such roll and thenceforth be incorporated by itself, and shall as well as such other township be a separate township. § 17. No part of cities, &c. to form part of townships, nor township elections held therein. § 18. Present township officers to continue in office until the fourth Monday in January, 1850. § 19. Until townships be divided into rural wards the election of councillors to be at a general township meeting at the last place of election; and in case of united townships, at the last place of election of senior township. § 20. In case of election at a general township meeting and not by ward elections, the township clerk to be the returning officer. § 21. Elections of township councillors to be held on the first Monday in January in every year. § 22. Collector's roll to be produced at elections, verified by the collector's oath, and the persons named on the roll shall be those entitled to vote, being also residents at the time of election; and no person shall be qualified to be elected as a township councillor not assessed upon the roll for ratable property in his own right or that of his wife, as proprietor or tenant, to the value of £100. § 23. Five councillors to be elected for each township, who shall hold office until the third Monday in January in the year next following. § 24. Provides for the first meeting of the township municipality after the annual election; and at such first meeting the councillors shall elect amongst themselves a *town-reeve*, and in townships having five hundred resident freeholders and householders on the collector's roll a deputy town-reeve. § 25. Township municipalities may adjourn their meetings from time to time, and the town-reeve, or in case of death or absence the deputy town-reeve, may summon a special meeting. § 26. Meetings of the municipality to be held at such place within the township as they shall appoint. § 27. Town-reeve to preside at such meetings, or in his absence the deputy, and if there be no town-reeve or deputy, then some other member of such municipality. § 28. Township municipality to nominate and appoint [such and so many assessors and collectors as shall be permitted or prescribed by the laws for assessment of property, and levying and collecting of rates in force for the time being], for the year ending on the third Monday in January next following and until successors appointed. § 29. Accounts to be audited as provided by this section. § 30. Boundaries of townships shall be ascertained on a permanent footing under the 38 Geo. III. c. 1, or under any future act. § 31 authorizes

the township municipalities to make by-laws for any of the following purposes, viz:—

*Township By-laws.*

1. For the purchase and acquirement of all such real and personal property within the township as may be required, for the use of the inhabitants thereof as a corporation, and for the sale and disposal of the same when no longer required.

2. For the erection, security, preservation, improvement or repair of a Town Hall, and of all other houses and buildings required by or being upon any land acquired by or belonging to such township as a corporation.

3. For the purchase and acquirement of such real property as may be required for common school purposes, for building common school houses, and for the sale and disposal of the same when no longer required, and providing for the establishment and support of common schools according to law.

4. For the erection and establishment of one or more public pounds in such township, and settling the fees to be taken by pound-keepers.

5. For the appointment, under the corporate seal of such township, of a sufficient number of pound-keepers, fence-viewers, overseers of highways, road surveyors, and of such and so many other officers as may be necessary for carrying into effect any of the provisions of this act, or of any other act of the legislature of this province, or of the late province of Upper Canada, or of any by-law or by-laws of the municipality of such township; and in like manner to displace all or any of them and appoint others in their room, and to add to or diminish the number of them or any of them as often as the said corporation shall see fit.

6. For regulating and prescribing the duties of all officers acting under the authority of the corporation of such township, and the penalties on their making default in the performance of such duties.

7. For settling the remuneration of all township officers in all cases where the same is not or shall not be settled by act of the legislature, and for providing for the payment of the remuneration by such act of the legislature, or by the by-laws of the said municipality provided and appointed for all township officers whatsoever.

8. For regulating the bonds, recognizances or other securities to be given by all township officers for the faithful discharge of their duties; for inflicting reasonable penalties for refusing to serve in any township office, and for the infringement of any and every by-law of the municipality of the township.

9. For the erection, construction or repair of such drains and water-courses as the interests of the inhabitants of such township shall in the opinion of the municipality require to be so erected, constructed or repaired at the public expense of such township.

10. For the opening, constructing, making, levelling, pitching, raising, lowering, gravelling, macadamizing, plankings, repairing, planting, improving, preserving and maintaining of any new or existing highway, road, street, sidewalk, crossing, alley, lane, bridge or other communi-

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cation within such township, and for the stopping up, pulling down, widening, altering, changing or diverting of any such highway, road, street, side-walk, crossing, alley, lane, bridge, or other communication within the same: Provided always, nevertheless, that no such new, widened, altered, changed or diverted highway, road, street, side-walk, crossing, alley, lane, bridge or other communication, shall be laid out so as to run through or encroach upon any dwelling-house, barn, stable, or outhouse, or any orchard, garden, yard or pleasure ground, without the consent in writing of the owner thereof.

11. For providing, that on each side of any highway, which shall pass through a wood, the timber shall be cut down for a space not exceeding twenty-five feet on each side of such highway, by the proprietor of the land on which such timber shall be, or in his default by the overseer of highways or other officer in whose division such land shall lie; such timber to be removed by the proprietor within a time to be appointed by the by-law, or in his default by such overseer of highways or other officer, in which last mentioned case it may be used by the overseer or other officer as aforesaid, for any purpose connected with the improvement of the highways and bridges in his division, or sold by him to defray the expenses incurred in carrying the by-law into effect: Provided always, that no such by-law shall authorize or compel the cutting down of any orchard or shrubbery, or of any trees planted expressly for ornament or shelter.

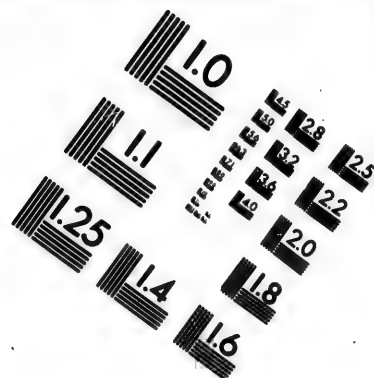
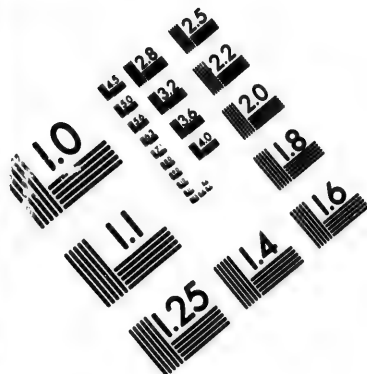
12. For the protection and preservation of any timber, stone, sand or gravel, growing or being upon any allowance or any appropriation for any public road or roads within such township, and for the sale of any timber growing or being upon any road allowance, if thought proper, by the council.

13. For regulating the driving and riding on or over any bridge erected or to be erected within such township.

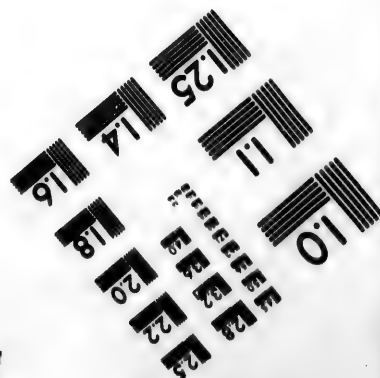
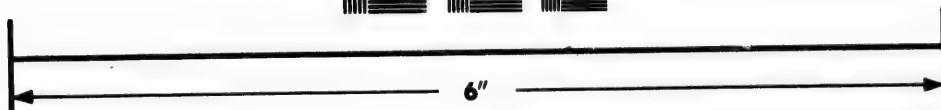
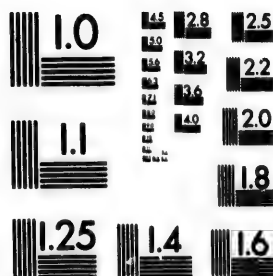
14. For regulating inns, taverns, ale-houses, victualling houses, ordinaries, and all houses where fruit, oysters, clams, victuals or spirituous liquors, or any other manufactured beverage may be sold, to be eaten or drunk therein, and all other places for the reception and entertainment of the public within the jurisdiction of the corporation of such township, and to limit the number of them, and in all cases when there exists no other provision by law for the licensing of such houses, to provide for the proper licensing of the same, at such rates as to the corporation of such township may seem expedient; the proceeds of such license, in cases not otherwise appropriated by law, to form part of the public funds of such township, and to be disposed of as the said corporation may consider advisable.

15. For making regulations as to pits, precipices, and deep waters, or other places dangerous to travellers.

16. For granting money to the municipal council of the county in which such township shall be situate, or to that of any adjoining county, to aid in the making, opening, building, maintaining, widening or improving any highway, road, street, bridge or communication lying between such township and any other township in the same or any



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whole ratable property of such township, liable to assessment according to any law which shall be in force in Upper Canada concerning rates and assessments.

32. For making such other local regulations, not contrary to any law of this province, or to any by-law of the municipal council of the county within which such township shall lie, and which shall by law extend to, and be in force within such township, as the good of the inhabitants of such township may in their opinion require.

33. For the repeal, alteration or amendment, from time to time, of all or any of such by-laws, and the making others in lieu thereof, as to them may seem expedient for the good of the inhabitants of such township.

By 13 & 14 Vic. c. 64, § 8, after reciting that provision was made by the 3rd section of the 12 V. c. 81, for the union of townships having less than one hundred resident freeholders and householders to any adjacent township having that number, but not for the union of several townships having each less than such prescribed number, but which, if formed into a union, would together have more than such prescribed number, and that in newly settled parts the want of such provision was found to occasion great inconvenience, it is enacted, that it should be lawful for the municipal council of any county or union of counties, to be passed before the 31st December, 1850, to dissolve any unions of townships formed or to be formed under the said 3rd section, and if deemed expedient to form such other unions of the townships within such counties or unions of counties as they might think most convenient for the accommodation of such townships: *Provided* 1. That in forming such unions it should be lawful only to attach together any two or more townships lying within the same county, but not if in different counties; 2. That the townships so to be united should together have not less than one hundred freeholders and householders on the collector's roll for the last year; 3. That such by-law shall designate the order of *seniority* of such townships, unless special reason to the contrary.

### TOWNSHIP COUNCILLORS.

See titles "Townships" and "Villages."

### TOWNSHIP OFFICERS.

By the General Municipal Act, 12 Vic. c. 81, § 31, the municipality of each township is empowered to make by-laws for (amongst other things) the appointment under the corporate seal of a sufficient number of pound-keepers, fence viewers, overseers of highways, road surveyors, and such other officers as may be necessary for carrying this act into effect, with power

to displace the number of regulations the authority incurred duties, for regulating

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to displace them and appoint others, and to add to or diminish the number of them, as the corporation shall see fit; also, for regulating and prescribing the duties of all officers acting under the authority of such corporation; and the penalties to be incurred on their making default in the performance of their duties, and for settling the remuneration to township officers; for regulating the securities to be given by them, and for inflicting reasonable penalties for refusing to serve office.

### TRAINING.

\*By 1 Vic. c. 11, § 1, it is enacted that all meetings and assemblies of persons for the purpose of training or drilling themselves, or of being trained or drilled to the use of arms, or for the purpose of practising military exercises, movements or evolutions, without any lawful authority for so doing, shall be and the same are hereby prohibited, as dangerous to the peace; and every person present or attending any such meeting for the purpose of training and drilling any other person or persons to the use of arms, or the practice of military exercise, movement or evolution, or who shall train or drill any other person or persons to the use of arms, or to the practice of military exercise, movements or evolutions, or who shall aid or assist therein, being legally convicted thereof, shall be liable to be confined in the public Penitentiary of this province for any term not exceeding two years, or to be punished by fine and imprisonment in any of the common gaols in this province for a period not exceeding two years, at the discretion of the court; and every person who shall attend or be present at any such meeting or assembly for the purpose of being, or who shall at any such meeting or assembly be trained or drilled to the use of arms or the practice of military exercise, movements or evolutions, being legally convicted thereof, shall be liable to be punished by fine and imprisonment, not exceeding two years, at the discretion of the court. § 2. It shall be lawful for any justice of the peace, constable or peace officer, or for any person acting in their aid or assistance, to disperse any such unlawful meeting or assembly, and to arrest and detain any person present at or aiding, assisting or abetting any such assembly or meeting as aforesaid; and it shall be lawful for the justice of the peace who shall arrest any such person, or before whom any person so arrested shall be brought, to commit such person for trial, unless such person shall give bail for his appearance at the next assizes, to answer to any indictment which may be preferred against him for any offence against this act. § 3. This act not to prevent any prosecution by indictment or otherwise, for anything that shall be an offence within the meaning of this act, and which might

have been so prosecuted if this act had not been made, unless the offender shall have been convicted or acquitted under this act. § 4, 5, 6, expired. § 7. Justices in any district shall have concurrent jurisdiction as justices of the peace with the justices of any other district, in all cases as to the carrying into execution the provisions of this act, and to all matters relating to the preservation of the public peace. § 8. Actions against justices, &c., for anything done under this act, to be commenced within six months. § 9. The Governor may declare by proclamation this act to be no longer in force in any particular district therein specified. § 10. Prosecutions under this act to be commenced within six calendar months.

### TRANSPORTATION.

\*By 40 G. III. c. 1, § 5, it is enacted, that when any person shall be convicted of any crime for which he shall be liable by law to be transported, the court, instead of the sentence of transportation, shall order and adjudge that such person be banished from this province for and during the same number of years or term for which he or she would be liable by law to be transported, and do remove himself or herself therefrom within a space of time to be fixed by the court, being not less than two days, nor more than eight, including the day of sentence. And any person found at large in any part of the province without some lawful excuse, after the time for banishment and before the expiration of the term, shall suffer death, as in cases of felony.

The punishment of *death* for this offence was abolished by \*3 W. IV. c. 4, and the offence was punishable as any other felony not of a *capital* nature.

\*By 7 W. IV. c. 7, § 1, it is enacted, that it shall be lawful after the passing of this act to sentence offenders to transportation, not only in such cases where by any law now in force or hereafter to be passed it is expressly provided that such offenders may be transported, but also in every case in which by the provisions of the act passed in the \*40 G. III. c. 1, the persons convicted would be liable to be banished from this province. *Provided*, that no such offender shall, under the authority of this act, be sentenced to be transported except by such court, and in such cases, and for such term of time as the same offender might, according to the said act, be banished from this province: and nothing in this act shall be construed to take away or affect the power of sentencing offenders to be banished, according to the act hereinbefore recited, when it shall appear proper to pass such sentence. § 2. All the provisions now in force which are contained in the said act \*40 G. III. c. 1, pre-

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specting persons returning to this province before the expiration of the period for which they have been banished, or have consented to be banished according to the terms of any conditional pardon, shall equally extend to any person returning from transportation. § 3. That the sentence in cases of transportation shall be that the offender shall be transported for a time to be mentioned in such sentence, or for life, where that may be lawful and shall in the opinion of the court appear proper, to such place as the Governor, or person administering the government of this province, by and with the advice of the executive council thereof, shall appoint. § 4. The Governor, with the advice of the executive council, is to determine, upon reference to his Majesty's government in England, to what foreign possession convicts shall be transported from this province. § 5. Convicts to be removed to the sea-port or place for transportation by judge's warrant, and if any person shall rescue or assist any convict to escape, such offence shall be punishable in the same manner as if such convict had, at the time it was committed, been confined in a gaol or prison in the custody of the sheriff or gaoler after sentence. § 6. Imprisonment after sentence to be reckoned as part of the term of transportation. § 8. In case of any difficulty occurring which may prevent the transportation of any convict, such convict may be detained in prison for the remainder of his sentence, unless pardoned, in which case banishment may be made a condition for the residue of the time.

By 4 & 5 Vic. c. 24, § 25, any person returning from banishment shall be transported for life, and imprisoned previous thereto.

*Commitment for returning from Banishment.*

[Commencement as ante p. 165.] having been banished from this province for the term of [seven years] in pursuance of a certain judgment against him for felony, feloniously and unlawfully, and without any lawful cause or excuse, was on the — day of —, in the year of our Lord —, and before the expiration of the said term of [seven years] at large, at — in the county aforesaid, against the form of the statute in that case made and provided. And you the said keeper, &c. as ante p. 165.

TRAVELLERS:

By 52 G. III. c. 4, entitled "an act to prevent damage to travellers on the highways in this province;" it is enacted, that it shall be the duty of every person travelling the highways with sleds or other carriages, when they meet each other, for each party to turn out to the right hand with their sleds or other carriages, and give one equal half of the road, highway or beaten

track, for the more easy passing each other without doing damage to either party's team, sled or carriage. § 2. Any person refusing, shall forfeit and pay 10s. with reasonable costs, to be recovered before one justice, on confession or oath of one witness; to be levied by distress and sale, and in default commitment to the common gaol for any time not exceeding three days, unless such fine and costs be paid. § 3. Every person travelling with sleighs on any road, highway, or beaten track, shall have two or more bells fixed to the harness, under the penalty of 10s. to be recovered as aforesaid. § 5. Complaints to be made within 10 days. § 6. Act to be in force for four years.

By \*58 G. III. c. 11, § 3, one moiety of all fines under the above act, shall be paid to the informer, and the other moiety to the receiver general, for the use of the province. These acts were made permanent by the \*59 G. III. c. 17.

*Information against a person for neglecting to give one half of the Road. Penalty, 10s.*

County of —, } Be it remembered, that on the — day of —, in  
to wit. } the year of our Lord one thousand eight hundred and  
—, at the township of — in the county aforesaid, C. D. of —  
in the said county, yeoman, who as well for our sovereign lady the Queen  
as for himself doth prosecute in this behalf, personally cometh before  
me, J. P. esquire, one of her Majesty's justices of the peace for the  
said county, and as well for our said lady the Queen as for himself inform-  
eth me, that he, this informant, within the space of ten days, now last  
past, to wit: on the — day of —, in the year, aforesaid, at the town-  
ship aforesaid, in the county aforesaid, was travelling with a waggon,  
drawn by two horses, upon a certain road and highway in the said town-  
ship, leading from — in the county aforesaid, to — in the same  
county, and that while so travelling upon the said road and highway as  
aforesaid, he, this informant, met in and upon the said road and highway  
one C. D. late of the township aforesaid, in the county aforesaid, yeoman,  
who was also travelling upon the said road and highway, in an opposite  
direction to this informant, with a certain other waggon drawn by two  
horses; and this informant further saith, that the said C. D. upon the oc-  
casion aforesaid, neglected and refused to turn out to the right with his  
said waggon, and give to this informant one equal half of the width of  
the said road and highway there, for the more easy passing of each  
other, and that instead of so doing, he, the said C. D. on the occasion  
aforesaid, and while so passing this informant upon the said road and  
highway as aforesaid, [continued to travel on in the centre of the said  
road with his said waggon and horses, or the same side of the road upon  
which this informant was then and there lawfully travelling as aforesaid,  
to wit: the right hand side of the said road and highway leading from  
the said — to —], contrary to the form of the statute in such case  
made and provided, whereby the said C. D. hath forfeited for his said  
offence the sum of 10s., whereof the said C. D., who prosecuteth as

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aforesaid, prayeth the consideration of me, the said justice, in the premises, and that the said A. B. may be convicted of the offence aforesaid, and that one moiety of the said forfeiture may be adjudged to our said lady the Queen, and the other moiety thereof to the said C. D., according to the form of the statute in that case made and provided, that the said A. B. may be summoned to appear before me and answer the premises, and make his defence thereto.

Exhibited before me, J. P.

N B—This information should not be upon oath. The offence must be proved by other testimony than that of the informer.

*Summons on the preceding Information.*

County of —, } To A. B. of — in the said county, yeoman.  
to wit. } Whereas, you have this day been charged before me, J. P., esquire, one of her Majesty's justices of the peace for the said county, in and by a certain information in writing, exhibited before me, the said justice, the — day of — in the year of our Lord —, by one C. D. of — in the said county, yeoman, who therein informeth me, the said justice, that he, the said informant, within the space of ten days now last past, to wit: on the — day of — in the year aforesaid, at, &c. [here set forth the offence as charged in the information to the concluding word thereto.] These are therefore to require you to appear before me at — in the said county, on — next the — day of — instant, at the hour of — in the forenoon of the same day, to answer to the said charge, and to be further dealt with according to law. Herein fail you not. Given under my hand and seal, the — day of — in the year of our Lord —.

*The Conviction*

Must be in the form required by the 12 W. IV. c. 4. See ante, p. 200; see also titles "Distress," ante p. 252, and "Commitment," ante p. 167.

*Information against a person travelling in a sleigh without bells affixed to the harness. Penalty 10s.*

Commencement the same as in the last form.] that A. B., late of the township of —, in the county aforesaid, within the space of ten days now last past, to wit: on the — day of —, in the year aforesaid, at the township aforesaid, in the county aforesaid, did travel upon a certain road and highway leading from — to —, in the said county, in a certain sleigh, drawn by one horse, and without having any bell or bells affixed to the harness of the said horse, or otherwise, contrary, &c. [as in the last precedent.]

The other forms referred to in the last may be easily adapted in this case. But it should be remarked, that the clause imposing the penalty for travelling without sleigh bells does not specifically give the costs of prosecution. It will therefore be proper to proceed for the costs, under the statute 13 G. III. 19. See ante title "Costs," p. 232.



**TRAVERSE.**  
 •By the 3 W. IV. c. 4, § 111, no traverse or other postponement of any trial shall be allowed, except upon special cause shewn to the satisfaction of the court, or by consent of his Majesty's attorney or solicitor general prosecuting the same.

### TREASON.

Treason, according to Lord Coke, is derived from *trahir*, to betray; and *trahison*, by contraction, treason, is the betraying itself.—3 Inst. 4. Treason, generally spoken, is intended not of petit treason, but of high treason only.—1 H. H. 316.

#### Of High Treason.

By the statute of the 25 Ed. III. st. 5, c. 2, which Lord Hale calls a sacred act, and Lord Coke an excellent act, and the king who made it a *blessed* king, and the parliament a *blessed* parliament, all treasons which had been uncertain before, were settled; which act, by the 1 Mar. sess. 1, c. 1, is reinforced, and again made the only standard of treason; and all statutes, between the said statutes of the 25 Ed. III. and 1 Mar., which made any offence high or petit treason, or misprision of treason, are abrogated, so that no offence is at this day to be esteemed high treason, unless it be either declared to be such by the said statute of the 25 Ed. III., or made such by some statute since the 1 Mar.

The 25 Ed. III. is as follows:—"Whereas divers opinions have been before this time, in what case treason shall be laid, and in what not, the king, at the request of the lords and commons, hath made a declaration in the manner as hereinafter followeth—that is to say: when a man doth compass or imagine the death of our lord the king, or of our lady his queen, or of their eldest son and heir; or if a man do violate the king's companion (that is, his wife.—3 Inst. 9), or the king's eldest daughter, unmarried; or the wife of the king's eldest son and heir; or if a man do levy war against our lord the king in his realm; or be adherent to the king's enemies in his realm giving them aid and comfort in the realm or elsewhere, and thereof be probably (proveablement, proveably) attainted of open deed by the people of their condition; and if a man counterfeit the king's great or privy seal, or his money; and if a man bring false money into the realm, counterfeit to the money of England, knowing the same to be false; and if a man slay the chancellor, treasurer, or the king's justices of the one bench or the other, justices in eyre, or justices of assize; and all other justices assigned to hear and determine, being in their places doing their offices."

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And by the statute 1 Mar. sess. 1, c. 1 (which Lord Hale calls another excellent law), "no act, deed or offence, being by act of parliament made treason, by words, writing, ciphering, deeds, or otherwise, whatsoever, shall be adjudged to be treason, but only such as be declared by the said statute of the 25 Ed. III." And this, he says, at one blow laid flat all the numerous treasons at any time enacted since the 25 Ed. III.—1 H. H. 308.

Lord Coke (3 Inst. 14, 140) seems to be of opinion, upon the said act of the 25 Ed. III., that *bare words* are not a sufficient *overt act* or *open deed*, whereby to convict a person of treason; but they are misprision of treason only. So also Lord Hale seems to think that words, unless put into writing, are not regularly an overt act.—1 H. H. 111, 118. But Mr. Hawkins argues the contrary; and amongst other reasons for his opinion, he observes that to charge a man, with speaking treason is unquestionably actionable, which could not be if no words could amount to treason. Also, that as in the case of felony, he who by command or persuasion induceth another to commit felony, is an accessory in felony, so he who does the same in treason is a principal traitor (there being no accessories in treason, but all being principals): and yet such person doth not act but by words.—1 Haw. 39. And it has been the constant practice, ever since the revolution at least (1688), where a person, by treasonable discourses, hath manifested a design to murder or depose the king, to convict him upon such evidence. And in Lowick's case, Holt, C. J. declared that *express words* were not necessary to convict a man of high treason; but if, from the tenor of his discourse, the jury is satisfied he was engaged in a design against the king's life, this is sufficient to convict the prisoner.—Read. Treat. 147.

Offences in relation to the coin, in England, are made treason by many statutes, but are scarcely applicable to this province.

The different treasons relating to the papists, or persons exercising the Roman Catholic religion, namely, that created by the 5 Eliz. c. 1, of defending the pope's jurisdiction in this realm; that created by the 27 Eliz. c. 2, of a popish priest tarrying three days in England without taking the oaths; that created by the 3 Jac. 1, c. 4, of any natural-born subject being reconciled to the See of Rome—have long become obsolete, and seem indeed to be now virtually repealed by the 31 G. III. c. 32.

But there is one kind of treason declared by the 25 Eliz. c. 1, that is distinct from any treason of the last description, although the statute was made ostensibly against maintaining the

authority of the See of Rome. By § 2, it is enacted, that all persons who shall pretend to have power, or shall by any means put in practice to absolve, persuade, or withdraw any subject from his natural obedience to her Majesty, or to promise any obedience to the See of Rome, or of any other prince, state or potentate; or shall do any overt act to that intent or purpose, shall be guilty of high treason. So by the 3 Jac. I. c. 4, § 22, if any person shall, either upon the seas or beyond the seas, or in any other place within the dominions of his Majesty, his heirs and successors, put in practice to absolve, persuade, or withdraw, any of the subjects of the King, or of his heirs or successors of the realm of England, from their natural obedience to his Majesty, his heirs or successors, or to move them, or any of them, to promise obedience to any prince, state or potentate—every such person shall suffer as in cases of high treason. And by § 3, the like penalty attaches to any one being willingly so absolved or withdrawn from his allegiance, or who shall promise obedience to any such prince, state or potentate.

In high treason there are no accessories, but all are principals, and therefore whatever act or consent will make a man accessory to a felony before the act done, the same will make him a principal in case of high treason.—3 Inst. 9, 21.

By 7 W. —. c. 21, no person shall be prosecuted for high treason but within three years after the offence committed, except in the case of designing to assassinate the King's person. And by the 31 C. H. c. 2, persons committed for high treason shall be indicted the next term, or next assize, otherwise they shall not be let to bail, unless it appear to the court, upon oath, that the witnesses for the King could not be produced in that time; and in such case, they shall be indicted the second term or assize, or else discharged.

By 7 Anne, c. 21, § 11, persons indicted for high treason, or misprision of treason shall have a copy of the indictment, and lists of the jurors and witnesses, delivered to them ten days before the trial; and shall have two such counsel as they shall desire assigned to them by the court, who shall have access to them at reasonable times.—7 W. c. 5.

The judgment for high treason (not relating to the coin) formerly was, that the offender should be carried back to the place from whence he came, and from thence to be drawn to the place of execution, and be there hanged by the neck, and cut down alive, and that his entrails be taken out and burnt before his face, and his head cut off, and his body divided into four quarters, and his head and quarters disposed of at the King's pleasure—3 Inst. 443; but now, by 23 W. IV. c. 4,

the sentence is, that "such person shall be drawn on a hurdle to the place of execution, and be there hanged by the neck until such person be dead, and that afterwards, the body of such person shall be dissected and anatomized."

In the said judgment is implied forfeiture of lands and goods to the King; loss of dower; and corruption of blood.—*3 Inst.* 211. But after the death of the pretender (and of his issue), no attainder for treason shall disinherit or prejudice any heir or other person, other than the offender, during his life.—*7 An. c. 21, § 10; 17 G. II. c. 39, § 3.*

By 4 & 5 V. c. 24, § 18, the jury impanelled to try any person for treason, or felony, shall not be charged to inquire concerning his lands, tenements or goods, nor whether he fled for such treason or felony.

#### *Petit Treason*

Is where a servant slayeth his master, or a wife her husband, and is distinguishable from high treason in this way; high treason can only be committed against the King's subjects.

By \*8 W. IV. c. 4, the punishment for petit treason is the same as in cases of murder. See also 4 & 5 Vic. c. 27, § 2.

#### *Misprision of Treason.*

Misprision cometh of the French word *mespris*, which properly signifieth neglect or contempt; and misprision of treason, in legal understanding, signifieth when one knoweth of any treason, though no party or consentor to it, yet conceals it, and doth not reveal it in convenient time.—*3 Inst.* 36; *1 H. H.* 371. The judgment of misprision of treason is, to be imprisoned during life, to forfeit all his goods for ever, and the profits of his lands during his life.—*Inst.* 36. Every man, therefore, that knoweth a treason, ought with all speed to reveal it to the King, his privy council, or other magistrate.—*H. Pl.* 127. But it seemeth that misprision of petit treason is not subject to the judgment of misprision of high treason, but only is punishable by fine and imprisonment, as in the case of misprision of felony.—*1 H. H.* 375.

#### *Commitment for High Treason. (Archbold.)*

[Commencement as ante p. 165.] on the — day of —, in the year of our Lord — at — in the said county, together with divers other false traitors unknown, armed and arrayed in a warlike manner, and unlawfully, maliciously and traitorously assembled and gathered together, most wickedly, maliciously and traitorously did levy and make war against our sovereign lady Queen Victoria, — within this province, against the form of the statute in that case made and provided. And you the said keeper, &c. as ante p. 165, to the end,

*Another Form. (Archbold.)*

On the — day of —, &c., and on divers other days, as well before as after, during an open and public war between our sovereign lady Queen Victoria — and —, contriving and intending to aid and assist the said — in the prosecution of the said war against our said lady the Queen, maliciously and traitorously was adhering to and aiding and comforting the said — so being then an enemy of our said lady the Queen. And you the said keeper, &c.

### TREASURER.

By the 12 Vic. c. 81, § 171, it is enacted that it shall be the duty of the municipal corporations of the respective counties, towns, townships and villages, to appoint a treasurer, and of the municipal corporations of the respective cities to appoint a chamberlain of the same respectively, who shall hold office during their pleasure, and shall be paid by such salary or percentage as they shall appoint, to be raised and levied ratably upon the whole ratable property of such county, city, town, township or village respectively, according to the assessment laws then in force in Upper Canada, and who shall give such security for the faithful performance of the duties of his office, and more especially for the due accounting for, and paying over all monies which shall come into his hands by virtue of his office as the municipal corporation by which he was appointed shall direct. § 172. And it shall be the duty of each of such treasurers and chamberlains to receive, and safely keep, all monies belonging to the county, city, town, township or village for which he shall be appointed, and to pay out the same to such persons, and in such manner as he shall be directed to do by any lawful order of the municipal corporation thereof, or by any law in force, or to be in force in Upper Canada, and strictly to conform to and obey any such law or by-law lawfully made by any such municipal corporation, and faithfully to perform all such duties as may be assigned to him by any such law or by-law. § 173. That the clerk, treasurer and chamberlain so to be appointed by any municipal corporation as aforesaid, shall hold their offices until removed therefrom by the municipal corporation for the time being, notwithstanding any change in the persons of whom such municipal corporation shall be composed, occasioned by any new election or appointment. § 174. That the books of the present district treasurers, and all books, papers, accounts or documents of what kind soever, which shall have been kept by, or shall have come into the possession of any person or officer to be appointed or employed by any municipal corporation, by virtue of his office or employment, shall be deemed to be chattels belonging

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to such municipal corporation; and all monies or valuable securities which shall have been lawfully received or taken into his possession, by virtue of his office or employment, shall be deemed to be monies or valuable securities belonging to such municipal corporation; and if any such officer or person shall at any time fraudulently embezzle any such chattel, money or valuable security (and any refusal or failure to pay over, or deliver up any such chattel, money or valuable security to such municipal corporation, or to any officer or person by them authorised to demand the same, shall be held to be a fraudulent embezzlement thereof), he may be indicted and proceeded against, and being convicted thereof shall be liable to be punished in the same manner as any servant, who having fraudulently embezzled any chattel, money or valuable security, received or taken into his possession, by virtue of his employment for, and in the name, and on the account of his master, may be indicted, proceeded against, and punished: Provided always, that nothing herein contained shall impeach any other remedy against such offender or his sureties.

## TREES.

By stat. 4 & 5 Vic. c. 25, § 31, if any person shall steal, or shall cut, break, root up, or otherwise destroy or damage *with intent to steal*, the whole or any part of any tree, sapling or shrub, or any underwood, wheresoever the same may be respectively growing—the stealing of such article or articles, or the injury done being to the amount of a shilling at the least—every such offender, being convicted before a justice of the peace, shall for every such offence forfeit and pay over and above the value of the article or articles stolen, or the amount of the injury done, such a sum of money, not exceeding £5, as to the justice shall seem meet.

By stat. 4 & 5 Vic. c. 26, § 19, if any person shall unlawfully and *maliciously* cut, break, bark, root up, or otherwise destroy or damage the whole or any part of any tree, sapling or shrub, or any underwood respectively growing in any such park, pleasure ground, garden, orchard or avenue, or in any ground adjoining or belonging to any dwelling-house, every such offender shall be guilty of a *misdemeanor*, and being convicted thereof shall be punished accordingly; and if any person shall unlawfully and maliciously cut, break, root up, or otherwise destroy or damage the whole or any part of any tree, sapling or shrub, or any underwood respectively growing elsewhere than in any of the situations hereinbefore mentioned, every such offender (in case the amount of the injury done shall exceed one pound) shall be guilty of a *misdemeanor*, and being convicted thereof

shall be punished accordingly. § 20. If any person shall unlawfully and *maliciously* cut, break, bark, root up, or otherwise destroy or damage the whole or any part of any tree, sapling or shrub, or any underwood, wheresoever the same may be respectively growing, the injury done being to the amount of *one shilling* at the least, every such offender being convicted thereof before a justice of the peace, shall forfeit and pay over and above the amount of the injury done, such sum of money, not exceeding £1, as to the justices shall seem meet.

For the form of proceeding as to the penalties, see title "Summary Conviction."

### TURNPIKES.

By 4 & 5 Vic. c. 26, § 14, if any person shall unlawfully and maliciously throw down, level or otherwise destroy, in whole or in part, any turnpike gate, or any wall, chain, rail, post, bar or other fence belonging to any turnpike gate, or set up or erected to prevent passengers passing by without paying any toll directed to be paid by any act or acts, ordinance or ordinances relating thereto, in force in this province; or any house, building, or weighing engine, erected for the better collection, ascertainment or security of any such toll, every such offender shall be guilty of a *misdemeanor*, and being convicted thereof shall be punished accordingly.

By the 12 Vic. c. 25, all persons in the naval or military service of her Majesty, on actual duty, with their horses and carriages, and all horses, carts, carriages or wagons, in charge of any such persons, conveying any naval or military stores, in her Majesty's service, shall pass the gates free of toll.

### USURY.

Usury is the offence of extorting an unreasonable rate of interest for the loan of money, beyond what is allowed by law, and, from what is said in the books, it appears that usury was originally considered as an offence at common law.—2 *Roll.* 800; 3 *Inst.* 151, 152; 6 *Com. Dig.*; *Usury (A.) Anon. Hardr.* 410. The rate of legal interest in this province is 6 per cent. by the 51 G. III. c. 9, § 6; which also enacts, that all bonds, contracts and assurances whatsoever, whereby a greater rate of interest shall be reserved and taken, shall be utterly void; and every person who shall either directly or indirectly take, accept and receive a higher interest, shall forfeit and lose for every such offence treble of the value of the monies, wares, merchandizes and other things lent or bargained for, to be recovered by action of debt in the Court of King's Bench in this province; a moiety of such forfeiture to the use of the province, and the other moiety to the informer.

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## VAGRANTS.

1. *Idle and Disorderly Persons.*

By 7 J. c. 4, idle and disorderly persons shall be sent to the house of correction; and by 17 G. II. c. 5, idle and disorderly persons are thus described *inter alia*:—1. All persons who, not having wherewith to maintain themselves, live idle without employment, and refuse to work for the usual and common wages given to other labourers in the like work in the parishes or places where they are. 2. All persons going about from door to door, or placing themselves in streets, highways, or passages, to beg or gather alms in the parishes or places where they dwell—all these shall be deemed idle and disorderly persons. And it shall be lawful for one justice to commit such offenders (being convicted thereof before him, by his own view, or confession, or oath of one witness) to the house of correction, to be kept to hard labour, not exceeding one month. And any person may apprehend, and carry before a justice, any such persons going about from door to door, or placing themselves in streets, highways, or passages, to beg alms in the parishes or place where they dwell, and if they shall resist or escape from the person apprehending them, they shall be punished as rogues and vagabonds.

2. *Rogues and Vagabonds.*

By 17 G. II. c. 5, the following persons shall be deemed rogues and vagabonds:—1. All persons going about as patent gatherers, or gatherers of alms, under pretences of loss by fire, or other casualty. 2. Persons going about as collectors for prisons, gaols or hospitals. 3. Fencers. 4. Bearwards. 5. Common players, not authorised by law. 6. Minstrels. 7. Jugglers. 8. Gypsies. 9. Or pretending to have skill in physiognomy, palmistry, or like crafty science, or tell fortunes. 10. Or using any subtle craft to deceive and impose on any of his Majesty's subjects. 11. Or playing or betting at any unlawful games or plays. 12. All persons wandering abroad, and lodging in ale-houses, barns, out-houses, or in the open air, not giving a good account of themselves. 13. All persons wandering abroad and begging, pretending to be soldiers, mariners, or seafaring men. 14. Or pretending to go to work in harvest. 15. And all other persons wandering abroad and begging, shall be deemed rogues and vagabonds.

*Incorrigible Rogues are thus described.*

1. All end-gatherers offending against the statute of 13 G., being convicted of such offence. 2. All persons apprehended as rogues and vagabonds, and escaping from the persons who

apprehend them. 3. All rogues or vagabonds who shall break or escape out of any house of correction, before the expiration of the term for which they were committed or ordered to be confined by this act. 4. All persons who, after having been punished as rogues and vagabonds, and discharged, shall again commit any of the said offences: all these shall be deemed incorrigible rogues.—§ 4.

#### 4. *Apprehending Rogues.*

If any person shall be found offending against this act, the constable shall apprehend him, and convey, or cause him to be conveyed, to a justice of the peace—17 G. II. c. 5, § 5, under the penalty of 10s. for such refusal.—*Ib.* And any other person may apprehend and carry him to the constable, or to a justice.

#### 5. *Punishment.*

And such justice shall order such person so apprehended to be publicly whipped by the constable, or shall order him to be sent to the house of correction (or common gaol—27 G. III. c. 11) till the next sessions, or for any less time, as such justice shall think proper.—17 G. II. c. 5, § 7. And if committed till the sessions, and the justices at such sessions shall, on examination of the case, adjudge such person to be a rogue or a vagabond, or an incorrigible rogue, they may order such rogue or vagabond to be detained in the house of correction for any further time, not exceeding six months; and such incorrigible rogue, for any further time not exceeding two years, nor less than six months, and during his confinement to be whipped in such a manner, and at such times and places, as they shall think fit. And if such incorrigible rogue, so ordered by the sessions to be detained in the house of correction, shall break out, or make his escape, or shall offend again in like manner, he shall be guilty of felony, and be transported for seven years.—17 G. II. c. 5, § 7, 8, 9. And by 13 & 14 C. II. c. 12, the justices in sessions may transport such rogues, vagabonds, and sturdy beggars, as shall be duly convicted and adjudged to be incorrigible.—§ 23.

#### 6. *Penalty for lodging Vagrants.*

If any person shall knowingly permit any rogue, vagabond, or incorrigible rogue, to lodge or take shelter in his house, barn, or other out-house or building, and shall not apprehend and carry him before a justice, or give notice to the constable to do so, he shall forfeit not exceeding 40s. nor less than 10s., upon conviction before one justice, half to the informer, and half to the poor, by distress and sale.—17 G. II. c. 5, § 23.

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## 6. General penalty for hindering the execution of the Vagrant Act.

If any constable or other officer, or governor of any house of correction, shall be defective in his duty; or if any person shall hinder the execution of this act, or shall rescue any person apprehended, or aid therein, he shall, on conviction before one justice, forfeit not exceeding £5, nor less than 10s., and in default, be committed to the house of correction, with hard labour, not exceeding two months.—17 G. II. c. 5, § 22.

## VEGETABLES.

By 4 & 5 V. c. 25, § 34, if any person shall steal, or shall destroy, or damage with intent to steal, any tree, sapling, shrub, bush, plant, root, fruit or vegetable production, growing in any garden, orchard, nursery-ground, hot-house, green-house, or conservatory,—every such offender, being convicted thereof before a justice of the peace, shall forfeit and pay, over and above the value of the article or articles so stolen, or the amount of the injury done, such sum of money, not exceeding £5, as to the justice shall seem meet; and if any person so convicted shall afterwards commit any of the said offences, such offender shall be deemed guilty of felony, and being convicted thereof shall be liable to be punished as in the case of simple larceny. § 35. If any person shall steal, or shall destroy or damage with intent to steal, any cultivated root or plant used for the food of man or beast, or for medicine, or for dyeing, or for or in the course of any manufacture, and growing in any land open or enclosed, not being a garden or nursery ground, every such offender, being convicted thereof before a justice of the peace, shall forfeit and pay, over and above the value of the article or articles stolen, or the amount of the injury done, such sum of money not exceeding 20s. as to the justice shall seem meet; and in default of payment thereof, together with the costs if ordered, shall be committed to the house of correction for any term not exceeding one calendar month, unless payment be sooner made.

By 10 & 11 Vic. c. 4, § 7, attempt to set fire to any stock or to any vegetable produce of such kind, and with such intent, that if offence was complete the offender would be guilty of felony, &c., is made felony and punishable accordingly.

For forms of proceeding see title "Summary Punishment."

## VESSELS.

By 7 W. IV. c. 23, § 1, it is enacted that all steam-boats, schooners, vessels and rafts, that shall be navigated upon the lakes and rivers of this province, and the British channel of the St. Lawrence river, between the port of Kingston and the

eastern boundary of the province, shall have affixed, and the person or persons commanding, or having charge of the same, are required to affix one or more light or lights on the bow, or some conspicuous place of such steam-boat, schooner or other vessel, during every night that such vessel shall be navigating the said lakes, rivers, and channel, or either of them. § 2. For the purposes of this act, the night shall be construed to extend from one hour after sunset to one hour before sunrise, at all seasons of the year. § 3. Every steam-boat, or vessel, carrying passengers, shall be provided with a good and sufficient *gang board*, or gang boards, with substantial hand rails; and the master thereof shall, on stopping at any wharf or landing place, cause the same to be firmly secured to the vessel and wharf or landing place, for the safe and convenient transit of passengers; and shall cause to be affixed to the gangways (in the night time) good and sufficient lights; and the owners or occupiers of every such wharf or landing place, shall also (in the night time) cause to be shewn conspicuously on such wharf or landing place, and at every angle or turn thereof, a good and sufficient light. § 4. All vessels navigating as aforesaid shall be bound to take the *starboard* or right hand side of every channel in proceeding up or down the said lakes, rivers or channel, so as to enable vessels meeting each other to pass in safety; and when any two vessels are trying to windward, and there may be a doubt which vessel should pass to windward, the vessel on the *starboard* tack shall keep her wind, and the vessel on the *larboard* tack shall bear up or go to leeward. § 5. Whenever any steam-boat, schooner, or other vessel, or any raft, shall be going in the same direction with another steam-boat, schooner or other vessel, or with any raft or rafts a-head of it, it shall not be lawful to navigate the first mentioned boat, schooner, vessel or raft, so as to approach or pass the other, so being a-head, within the distance of twenty yards; nor to navigate the boat, &c., so being a-head as unnecessarily to bring it within twenty yards of the steam-boat, schooner, vessel or raft following it. § 6. The master having charge of any steam-boat, schooner, vessel or raft, at anchor in the night time, shall cause a good and sufficient light to be shewn in some part of the rigging or other conspicuous place of the said boat, &c. § 7. Any person commanding or having charge of any steam-boat, schooner, or vessel navigating the said lakes, rivers or channel, or any or either of them, offending against the provisions of this act, shall be liable to a penalty of £5, to be recovered upon conviction of such offence upon the oath of one credible witness, before any two of his Majesty's justices of the peace; and in default of payment of

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such penalty, with the costs and charges of and incident to conviction, it shall be lawful for the said justice (a) or justices to commit such person or persons to the gaol of the county or district wherein such conviction shall be made for any period not exceeding 30 days, as the said justices in their discretion shall direct. § 8. The owner or owners of all steamboats, schooners, and other vessels, the persons commanding or in charge of which shall neglect to comply with the provisions of this act, shall be liable for all damages to be sustained by any person or persons from any accident arising from non compliance, such damages to be recoverable by trial at law in the King's Bench.

*Form of Information against the Captain of a Steamboat under the 7 W. IV. c. 22, § 1 & 7. Penalty £5.*

Canada, } Be it remembered that on the — day of —, in  
County of —, } the year of our Lord —, at — in the said  
to wit. } county, C. D. of —, in the county aforesaid  
—, who, as well for our lady the Queen as for himself, doth  
prosecute in this behalf, personally cometh before us, two of her  
Majesty's justices of the peace for the said district, and informeth us  
that A. B., late of the township of —, being at the time of the offence  
being committed as hereinafter mentioned, the person commanding and  
having charge of a certain steamboat commonly called or known by the  
name of —, navigating Lake Ontario, did on the night of —, the  
day — of —, to wit at — o'clock of the said night, and while  
the said steamboat was being navigated on and over the said lake, and  
within the limits of this province, to wit, between the port of —, in  
the county of —, and the port of Toronto, in the said county of —,  
then and there navigate and cause the said steamboat to be navigated  
upon and over the said lake, between the said ports, and within the  
province aforesaid, without having any light or lights affixed on the  
bow or any conspicuous place of such steamboat, contrary to the form  
of the statute in such case made and provided, whereby, &c. [*conclude  
as in the form given ante p. 376.*]

For the forms of "Summons" and "Conviction" see ante  
p. 628, 200.

## VILLAGES.

By 13 Vic. c. 81 (as amended by 13 & 14 Vic. c. 64), § 52, the  
villages in schedule A are to be incorporated, with a common  
seal. § 53. Five councillors are to be elected for each village,  
on the first Monday in January every year; and a town reeve  
to be elected in like manner as in townships. § 54. In villages  
previously incorporated, or having a board of police, the clerk

(a) So in the act.

of such board, or town clerk, or inspecting trustee, shall be the returning officer for the first election, and at future elections the village clerk. § 55. In case of no such person, the Governor may appoint the returning officer. § 56. Ten days' notice of election to be given by the returning officer. § 57. The returning officer to procure a copy of the collector's roll : village councillor to possess real estate, or for a term of twenty-one years (of which seven at least shall be unexpired) within the village, of the assessed value of £250; or to be a tenant from year to year or for a term of years, at a *bona fide* rental of £20 per annum; or in receipt of £20 yearly rent of real estate within such village; and male inhabitants, freeholders or leaseholders upon such roll, and residents, assessed at £12 10s. within the village, and none others, shall be entitled to vote. § 58. Police or other villages (*not incorporated*), with a neighborhood containing over 1000 inhabitants, may be incorporated by petition to the Governor, of the police trustees or 10 inhabitants (as the case may be); and after incorporation, the first election to be held on the first Monday in January, and the village attached to the county to which it shall have been annexed, and subject to the same regulations and provisions of law, and to have the same privileges as a village named in schedule A. § 59. The municipality of such village to be formed in like manner as that of any township with the same powers, duties and liabilities; and the town reeve [and deputy town reeve, when from the number of freeholders and householders on the collector's roll, such municipality shall be entitled to elect such deputy town reeve] of such village, and other officers, to have the like powers, &c., as those of any township: and such [town reeve and deputy town reeve] to be a member of the county council. § 60. Municipality of incorporated villages empowered to make by-laws, viz.:

#### *Village By-laws.*

1. For the opening, constructing, making, levelling, pitching, raising, lowering, gravelling, macadamizing, planking, paving, flagging, repairing, planting, improving, preserving and maintaining any new or existing highway, road, street, square, side-walk, crossing, alley, lane, bridge or other communication, or any public wharf, dock, slip, drain, sewer, shore, bay, harbour, river or water and the shores and banks thereof within the jurisdiction of the corporation of such village, and for the entering into, performing and executing any arrangement or agreement with the municipal corporation of the county or counties in which such village may lie for the execution of any such work, at the joint expense and for the joint benefit of the municipal corporations of such county or counties, and of such village and the people they represent; and for the stopping up, pulling down, widening, altering, changing or diverting of

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any such highway, road, street, bridge or communication within the same: Provided always, nevertheless, that no such new, widened, altered, changed or diverted highway, road, street, side-walk, crossing, alley, lane, bridge, or other communication, shall be laid out so as to run through or encroach upon any dwelling-house, barn, stable or out-house, or any orchard, garden, yard or pleasure ground, without the consent in writing of the owner thereof.

2. For regulating or preventing the encumbering, injuring or fouling of any such highway, road, street, square, side-walk, crossing, alley, lane, bridge or other communication, and of any such wharf, dock, slip, drain, sewer and shore, bay, harbour, river or water, by any animals, wheelbarrows, cabs, carts, carriages or other vehicles, vessels, craft, lumber, stone, building or other materials or things whatsoever, or in any other manner whatsoever.

3. For directing and requiring the removal at any time of any door-steps, porches, railings or other erections, projections or obstructions whatsoever, which may project into or over the boundary lines of any such highway, road, street, square, side-walk, crossing, alley, lane, bridge or other communication, or of any such wharf, dock, slip, drain, sewer, shore, bay, harbour, river and water, or the shores and banks thereof, at the expense of the proprietor or occupant of the real property in or near which such projection or obstruction may be found.

4. For surveying, by competent persons, and fixing, marking, determining and settling the boundary lines of such highways, roads, streets, squares, alleys, lanes, bridges or other communications, and of all such public wharves, docks and slips, for giving names to the same, and affixing such names on boards or otherwise on the houses at the corners of the same.

5. For granting to the county or counties in which such village shall be situate, by way of loan, or otherwise, such sum or sums of money, in aid of such other moneys as may be raised by the municipal corporation of such county or counties, or by voluntary subscriptions, for or towards the making, opening or erecting of any new road or bridge on the bounds of such village.

6. For regulating and managing any existing market, and for establishing, regulating and managing any new market, for preventing the selling or vending by retail in the public highways any meat, vegetables, fruit, cider, beer or other beverage whatsoever; for regulating the place and manner of selling and weighing butcher's meat, hay, straw, fodder, wood, lumber and fish; for restraining and regulating the purchase and manner of selling all vegetables, fruit, country produce, poultry, and all other articles or things, or animals exposed for sale, or marketed in the open air; for preventing the forestalling, regrating or monopoly of market grains, meat, fish, fruits, roots and vegetables; for restraining and regulating the purchase of any such things by hucksters or runners living within such village or within one mile distant from the outer limits thereof; for regulating the measurement, length and weight of coal, lime, shingles, laths, cordwood and other fuel; and for imposing penalties for light weight, or short count or measurement in anything

marketed; for appointing inspectors for regulating weights and measures in the markets, and within such village, according to the lawful standard; and for visiting all places wherein weights and measures, steelyards or weighing machines of any description are used within such village, and for seizing and destroying such as are not according to such standard; and for imposing and enforcing the collection of penalties upon any person or persons therein who shall be found in the possession of unstamped or unjust weights, measures, steelyards or other weighing machines; for regulating all vehicles, vessels and other things in which anything may be exposed for sale or marketed in any highway, street or public place, and for imposing a reasonable charge or duty thereon, and establishing the mode in which it shall be paid; for seizing and destroying all tainted and unwholesome meat, poultry, fish, or articles of food; and for distraining butchers' meat for the rent of market stalls, and for selling the same after six hours' notice.

7. For regulating any harbour lying within the limits of such village, and the vessels, crafts and rafts arriving in it; for imposing and collecting such reasonable harbour dues thereon as may serve to keep such harbour in good order, and provide for the payment of a harbour master, and the erection and maintenance of the necessary beacons therein: for regulating and providing for the erection and rent of wharves, piers and docks in the said harbour, and for preventing the filling up, or encumbering of any such harbour.

8. For regulating the assize of bread, and preventing the use of deleterious materials in the making thereof; and for providing for the seizure and forfeiture of bread baked contrary thereto.

9. For enforcing the due observance of the sabbath; for preventing vice, drunkenness, profane swearing, obscene language, and any other species of immorality and indecency in the streets or other public places, and for preserving peace and good order; for preventing the excessive beating or cruel and inhuman treatment of animals on the public highways of such village; for preventing the sale of any intoxicating drink to children, apprentices or servants, without the consent of their legal protectors; for suppressing and imposing penalties on the keepers of low tipping houses and houses of ill fame visited by dissolute and disorderly characters; for licensing and regulating victualling houses or other houses of refreshment where spirituous liquors are not sold; for the regulation of all public billiard tables, and for licensing, regulating or preventing bowling alleys or other places of amusement; for regulating or preventing, restraining or suppressing horse-racing and gambling houses, and for entering into them and seizing and destroying faro-banks, rouge-et-noir and roulette-tables, and other devices for gambling; for restraining and punishing all vagrants, drunkards, vagabonds, mendicants and street beggars, and all persons found drunk or disorderly in any street or public place in such village; for restraining or regulating the licensing of all exhibitions of natural or artificial curiosities, theatres, circuses, or other shows or exhibitions kept for hire or profit.

10. For abating and causing to be removed all public nuisances; for

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regulating the construction of privy vaults; for causing vacant lots in central situations when they become nuisances to be properly enclosed; for regulating or preventing the erection or continuance of slaughter houses, gas works, tanneries, distilleries or other manufactories or trades which may prove to be nuisances; for preventing the ringing of bells, blowing of horns, shouting and other unusual noises in the streets and public places; for preventing or regulating the firing of guns or other fire-arms; for preventing or regulating the firing or setting off of fire balls, squibs, crackers or fire-works; for preventing or regulating the washing or bathing in any public water in or near such village; for preventing and punishing parties engaged in charivaries and other like disturbances of the peace; for preventing any indecent public exposure of the person, or other indecent exhibition whatsoever; for preventing profane swearing and the use of blasphemous, obscene or indelicate language.

11. For establishing, maintaining and regulating one or more public lock-up-houses in and for such village, for the detention and imprisonment of all persons sentenced to an imprisonment of not more than ten days, under any of the by-laws of such village, and of all other persons lawfully detained in custody for examination before a justice of the peace or other competent authority on any charge of having committed any offence against the law or the by-laws of such village, or detained for the purpose of his transmission to any common gaol or house of correction, upon commitment or otherwise, either for trial or in the execution of any sentence that may have been passed upon him, either by a justice of the peace or other competent authority in that behalf.

12. For the establishing, protecting and regulating of public fountains, wells, pumps, cisterns, reservoirs and other conveniences for the supply of good and wholesome water or for the extinguishment of fires, and to make reasonable charge for the use thereof; and for preventing the waste and fouling of public water.

13. For regulating the keeping and transporting of gunpowder and other combustible or dangerous materials; and for erecting, regulating and providing for the support by fees of a village magazine for the storing of gunpowder belonging to private parties, and for compelling persons to store therein; for preventing or regulating the use of fire, lights or candles in livery or other stables, cabinet-makers and carpenters' shops, and combustible places; for preventing or regulating the carrying on of manufactories or trades dangerous in causing or promoting fire; and for regulating the mode of removal and requiring the safe keeping of ashes in proper deposits; for regulating, removing or preventing the construction of any chimney, flue, fire-place, stove, oven, boiler or other apparatus or thing in any house, manufactory or business, which may be dangerous in causing or promoting fire; for regulating the construction of chimneys as to dimensions and thickness, and the carrying of the same to a proper height above the roofs of buildings, and for enforcing the proper sweeping or cleaning of the same by licensed or other chimney sweepers; for guarding against the calamities of fire by regulating and enforcing the erection of party walls; for com-

selling the owners and occupants of houses to have skuttles in the roofs, and stairs and ladders leading to the same, and for authorizing the officer to be appointed for that purpose to enter at all reasonable times or hours upon the property of any party subject to such regulations, for the purpose of ascertaining that the same are properly obeyed; for requiring the inhabitants of such village to provide so many fire-buckets, in such manner and time as they shall prescribe, and for regulating the examination of them and the use of them at fires; for regulating the conduct and enforcing the assistance of the inhabitants present at fires, and the preservation of property thereat; for making regulations for the suppression of fires and the pulling down or demolishing of adjacent houses, buildings or other erections for that purpose; for purchasing and establishing and regulating fire, hook, ladder and property saving companies; for providing medals or rewards for persons who shall distinguish themselves at fires, and for assisting the widows and orphans of persons who may be killed by accidents occurring at such fires.

14. For entering into and examining all dwelling houses, warehouses, shops, yards and outhouses, for ascertaining whether any such places are in a dangerous state, with respect to fire or otherwise, and for directing them to be put in a safe and secure condition; for appointing fire wardens and fire engineers; for appointing and removing firemen; for making such rules and regulations as may be thought expedient for the conduct of such fire companies, hook and ladder companies and property saving companies as may be raised with the sanction of the corporation of such village.

15. For providing for the health of the village and against the spreading of contagious or infectious diseases; for regulating the interment of the dead, and for directing the returning and keeping of bills of mortality; and for imposing penalties on physicians, sextons and others for default in the premises; and for providing and regulating one or more public cemeteries for the interment of the dead.

16. For laying out, improving and regulating any public cemetery for the burial of the dead that they may obtain and establish for such village, and for selling or leasing such portions thereof as they may think proper, and for declaring in the conveyance thereof to the purchasers or lessees the terms on which such portions are to be held, and for making such other regulations for the improvement, ornament and protection of such cemetery as they may think necessary and proper.

17. For preventing the immoderate riding or driving of horses or cattle in any of the public highways or streets of such village; and for preventing the leading, riding or driving of horses or cattle upon the side-walks of the streets of such village, or other improper places therein.

18. For regulating or preventing the fishing with nets or seines, the use of fishing lights, or the erection or use of weirs for eels or other fish in any harbour, river or public water within the limits of the jurisdiction of the corporation of such village. 19. For regulating inns, taverns, ale houses, victualling houses; ordinaries and all houses where fruit, oysters, clams, victuals or spirituous liquors, or any other manufactured beverage may be sold, to be eaten or drank therein, and all other places

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for the reception and entertainment of the public within the jurisdiction of the corporation of such village, and to limit the number of them, and in all cases when there exists no other provision by law for the licensing of such houses, to provide for the proper licensing of the same, at such rates as to the corporation of such village may seem expedient, the proceeds of such licenses, in cases not otherwise appropriated by law, to form part of the public funds of such village, and to be disposed of as the said corporation may consider advisable.

20. For preventing the injuring or destroying of trees planted or growing for shade or ornament in such village, and for preventing the pulling down or defacing of sign boards.

21. For borrowing, under the restrictions and upon the security hereinafter mentioned, all such sums of money as shall or may be necessary for the execution of any village work within the jurisdiction and the scope of the authority by this act conferred upon them.

22. For raising, levying and appropriating such moneys as may be required for all or any of the purposes aforesaid, by means of a rate or rates to be assessed equally on the whole rateable property of such village, according to any law which shall be in force in Upper Canada concerning rates and assessments.

23. For making all such other by-laws as may be necessary and proper for carrying into execution the powers herein vested or hereafter to be vested in the corporation of such village, or in any department or office thereof, for the peace, welfare, safety and good government of such village, as they may from time to time deem expedient, such by-laws not being repugnant to this or any other act of the parliament of this province or of the parliament of Upper Canada; or to the general laws of that part of this province: Provided always, nevertheless, firstly, that no person shall be subject to be fined more than five pounds, exclusive of costs, or to be imprisoned more than thirty days, for the breach of any by-law or regulation of such village: And provided also, secondly, that no person shall be compelled to pay a greater fine than ten pounds for refusing or neglecting to perform the duties of any municipal office when duly elected or appointed thereto.

24. For the repeal, alteration or amendment from time to time of all or any of such by-laws and the making others in lieu thereof, as to them may seem expedient for the good of the inhabitants of such village.

By 13 & 14 V. c. 64, § 9, after the incorporation of any village, or of a village into a town, such village or town shall be held to be part of the county to which it shall belong, as well for the purpose of representation, as for all other purposes, except only when such town shall be entitled to be represented in the Legislative Assembly by a member or members of its own.

# WARRANT.

A warrant is a precept under the hand and seal of a magistrate or other public functionary, directed to some officer, either to arrest an offender or to seize or distrain upon his goods, to

be dealt with respectively in either case according to law. A warrant can only be executed by some one or more of the persons to whom it is directed, unless, indeed, it be directed to the sheriff, who may either by parol or by precept in writing, authorise an officer, sworn and known, to execute it, but the sheriff cannot empower any other person without a precept in writing.—1 *Haw. c. 60, § 11*. If the warrant direct the officer to cause the party complained of to come before some justice of the peace, to find surety for keeping the peace, the officer, before he makes any arrest, ought first to require the party to go with him, and find sureties according to the purport of the warrant, and if he refuses, the officer may carry him by force before the magistrate, or confine him in some gaol till he can be conveniently brought before the magistrate.—*Ibid*. If the warrant specially direct that the party shall be brought before the justice who issued it, the officer ought not to carry him before any other; but if the warrant be general, to bring him before any justice, the officer has then the election to bring him before what justice he pleases, and may carry him to prison for refusing to obey the warrant.—*Ibid*.

In what cases, and in what form a warrant may be granted for the apprehension of a party, see *ante* "Arrest," p. 45; "Justices of the Peace," p. 406.

For what cause, and in what form a warrant of commitment may be issued, see "Commitment," p. 161.

And see further, "Distress," "Search Warrant," and "Habeas Corpus."

### WEIGHTS AND MEASURES.

By the 4 G. IV. c. 16, § 3, the secretary shall furnish each district with a true standard.

§ 6. And all store-keepers, shop-keepers, millers, distillers, butchers, bakers, hucksters, and other trading persons, who shall have in their possession any weights or measures, whereby they sell or buy any articles, other than such as have been examined and stamped as aforesaid, shall, upon being convicted before any one justice, on the oath of one witness, forfeit £2 for every offence, to be levied, with reasonable costs, by distress and sale, and in default the offender shall be committed to the common gaol for any term not exceeding one month. The other sections of this act are repealed by the 12 Vic. c. 85.

\*By the 3 Vic. c. 17, § 3, information of the inspector upon oath to be *prima facie* evidence for a conviction.

By 12 Vic. c. 85, § 2, the inspectors of licenses are to be also inspectors of weights and measures within their respective districts, § 2, and to stamp if found true, all weights and



measures submitted to them; § 4. to attend for that purpose at such times and places as the magistrates in quarter sessions shall appoint; and every storekeeper, shopkeeper, miller, distiller, butcher, baker, huckster, or other trading person, wharfinger or forwarder, who shall two months after the appointment of an inspector therefor, use any weight or measure not duly stamped according to law, or which shall be found light or otherwise unjust, shall, on conviction, forfeit not more than £5, nor less than £2, to be recovered under the next section; and every such light or unjust weight or measure so used shall, on being discovered by any such inspector, be seized, and on conviction of the offender be forfeited and broken up by the inspector. § 5. It shall be lawful for every such inspector at all reasonable times, to enter any shop, store, warehouse, stall, yard, or place whatsoever within his division, where any commodity shall be bought, sold or exchanged, weighed, exposed or kept for sale, or weighed for conveyance or carriage, and there to examine all weights, measures, steelyards, or other weighing machines, and to compare and try the same with the copies of the standard weights or measures provided by law; and if any shall be found unstamped or light, or otherwise unjust, the same shall be liable to be seized and forfeited, and the person in possession of the same shall, on conviction, forfeit a sum not exceeding £2 for the first, and £5 for every subsequent offence, to be recovered with reasonable costs before any justice of the peace on the oath of the inspector, or any other credible witness, and if not forthwith paid, to be levied by distress and sale, and in default of distress the offender shall be committed to the common gaol of the district, for any term not exceeding one month: penalties under this act to belong to the crown, and be paid to the inspector, to be accounted for with other public monies; and any person who shall have in possession a steelyard or other weighing machine, found on examination to be incorrect or unjust, or shall neglect or refuse to produce for examination when required all weights, measures, steelyards, or other weighing machines in his possession, or shall obstruct or hinder such examination, shall be liable to a like penalty, to be recovered and applied as aforesaid; but no such penalty shall be incurred until two months at least after a standard of weights and measures shall have been received by the inspector. § 6. Forging or counterfeiting any stamp or mark used for stamping or marking weights or measures, to be a misdemeanor, and the offender liable to fine and imprisonment: such fine not to exceed £20, and imprisonment not to exceed three calendar months; and if any person shall knowingly sell, alter, dispose of, or expose to sale

any weight or measure, with such forged stamp or mark thereon, shall for every such offence forfeit, on conviction, a sum not exceeding £10, nor less than 40s.; and the same shall be forfeited and broken up by the inspector. § 7. If any inspector shall stamp or mark any weight or measure, not duly compared and verified by the standard weights and measures, or shall be guilty of any breach of duty under this act, he shall forfeit on conviction a sum not exceeding £5, to be recovered as aforesaid. § 8. Inspector's fee for every weight or measure marked or stamped, to be 6d. and no more. § 9. In case of more than one inspector for the district, standard weights and measures to be lodged with such inspector as the magistrates in quarter sessions may direct. § 10. Inspectors to give one month's notice in a newspaper from time to time, and at least once a year, of the days and places to be appointed by the magistrates in quarter sessions, when he will attend to examine weights and measures. § 11. Former inspectors to hand over to the inspectors under this act all and every standard weight and measure, balance, stamp, brand or other machine, or copy thereof in their custody, under a penalty of £5, to be recovered as aforesaid. § 12. Whenever any municipal body shall appoint an inspector for any city, town, or incorporated village, such inspector may apply to the inspector under the provisions of this act, for the district, &c., within which such city &c. shall be situate, to adjust a copy of any of the standard weights and measures for the use of such city &c., by the standard in possession of such inspector; and upon producing to such inspector such weights and measures as shall be required for such city &c., it shall be the duty of such inspector carefully to compare and adjust, and to seal, stamp, or mark the same as provided by law, for the like fees, as in other cases; and thereupon the powers, duties and liabilities of the inspectors appointed under this act shall cease, as to such city &c., and devolve upon the inspector thereof. § 12. In case of removal from office, resignation or removal from the place, such inspector to deliver over to his successor in office all beams, stamps and standard weights and measures in his possession; and in case of death his representatives to do so; and in case of neglect or refusal, in addition to the penalties hereinbefore provided, such successor may maintain action on the case, against the party or parties, and recover double the value of such standards, with double costs of suit; one moiety to the plaintiff, and the other to be applied in supplying such standards as may be required. § 14. Appeal given in cases where penalty inflicted shall exceed 40s. to the next general quarter sessions, holden not less than twelve days after conviction.

tion, in like manner as provided with regard to appeals, by the 33 and 34 § of the 4 & 5 Vic. c. 26.

## *Information for having Weights &c. contrary to the Statute.*

County of —, } The information and complaint of A. B. of —,  
to wit. } being a person duly appointed and sworn to examine the weights and measures within the county of —, preferred at a petty sessions held for the said county, at —, in the said county, before us J. C. and S. P., esquires, (or before one justice) justices of the peace for the said county, whose names are hereunder written, this — day of —, in the year of our Lord 18—, who saith, that on the — day of —, one C. D. of —, grocer and shopkeeper, (he the said C. D. being a person who sells by retail and weight, goods, wares and merchandizes), at the dwelling-house and shop of him the said C. D., situate at —, in the said county, then and there had in his possession, in his said dwelling-house and shop, certain weights and measures, to wit, (*here describe them*) whereby he the said C. D. sold and bought, and which were not duly marked and stamped, as by law is required, contrary to the form of the statute in that case made and provided, whereby he the said C. D. hath incurred the forfeiture of £2, imposed by the said statute, for the said offence, and therefore he prayeth that he may be summoned according to law.

Exhibited before us, the —, day of —, 18—.

N. B.—The above information should not be upon oath. The party informing being interested in the penalty is not therefore a competent witness; but in support of the conviction one other credible witness, not interested, should be called and sworn. Proof of either buying or selling will be sufficient.

## *Summons thereon.*

County of —, }  
to wit. } To C. D. of —.

Whereas A. B. of —, in the said county, being a person duly appointed and sworn to examine the weights and measures within the county of —, hath this day preferred an information against you, for having on the — day of —, at your dwelling-house and shop, situate at —, in the said county, in your possession certain weights and measures, to wit, (*here describe them*), whereby you sold and bought, and which were not duly marked and stamped as by law is required, contrary to the form of the statute in that case made and provided, whereby you the said C. D. have incurred the forfeiture of £2, imposed by the said statute for the said offence; these are therefore to require you personally to appear before us, or such other of her Majesty's justices of the peace for the said county, as shall be present at the petty sessions to be holden at —, in the said county, on the — day of —, at — o'clock in the forenoon of the same day, then and there to answer the premises. Herein fail you not. Given under our hands and seals, this — day of —.

## *Conviction.*

The conviction must be in the general form required by the 2<sup>d</sup> Wm. IV. c. 4. See form ante p. 200.

See also titles "Distress Warrant," *ante* p. 252, and "Commitment," *ante* p. 167.

### WIFE.

The wife of a man (in legal language a *feme covert*) is so much favoured in law on account of the matrimonial subjection due from her to her husband, that if she commit theft, or even a burglary, by his coercion, or merely in his company (when the law presumes a coercion), she is held to be exempt from punishment; being considered as acting in either of these instances by compulsion, and not of her own free will. This doctrine, Sir William Blackstone observes, is at least a thousand years old, being to be found among the laws of king Ina, the West Saxon.—4 *Bl. Com.* 28. The presumption of coercion, however, does not amount to more than a *prima facie* presumption of law, and therefore, if it appear in evidence that the wife was not drawn to the offence by the husband, but that she was in fact the principal instigator of it, or was acting herself as a free and independent agent, she is in this case guilty as well as the husband. If the wife also procure her husband to commit the offence, she is then an accessory before the fact, in the same manner as if she had been sole.—1 *Hale*, 516; 2 *Haw. c.* 29, § 34.

There are also some exceptions as to the impunity of the wife in committing crimes, even though acting under the coercion of her husband, by reason of the heinousness of the offence committed. Thus, in treason, no plea of *coverture* shall excuse the wife.—4 *Bl. Com.* 29. In murder also, and offences of the like description, which are prohibited by the law of nature, and are *mala in se*, the wife is held a responsible agent notwithstanding the coercion of her husband.

In inferior misdemeanor, there is also another exception as to the irresponsibility of the wife, for she may be indicted and punished *with* her husband for keeping a *brothel*; this being considered to be an offence touching the domestic economy of the *house*, in which the wife has necessarily a principal share, and of that description, moreover, which the law presumes to be generally conducted by the intrigues of the female sex.—1 *Haw. c.* 1, § 12. But a prosecution for a *conspiracy* is not maintainable against husband and wife only, because they are esteemed but one person in law; and in order to support an indictment for conspiracy there must be a conspiring between *two* persons at the least.—1 *Haw. c.* 72, § 8. In all cases, however, where the wife offends *alone*, without the company or coercion of her husband, she is then as much responsible for her offence as any *feme sole*.—4 *Bl. Com.* 29. And

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whenever she commits an offence in the absence of her husband, it will be no excuse that she committed it by his order.—*R. v. Morris, R. & R.* 270. If a woman receives stolen goods into her house, knowing them to be so, or lock them up in her chest or chamber, without the knowledge of her husband, she alone may be indicted. But if the ignorance of the husband is not satisfactorily proved, as by his continued absence from home, or by other circumstances, the law will, in most cases, impute the receiving to him, and not to the wife.—*Dalt. c. 357, p. 353.* Although the husband may be indicted as an accessory for receiving the wife, knowing her to have committed a felony, yet the wife shall not be deemed an accessory for receiving her husband. Neither is the wife affected by receiving jointly with her husband a *third person*, who has committed felony; except in case of treason. But if she alone, in the absence of her husband, and without his knowledge, knowingly receive a felon, she may then be indicted as an accessory, and not the husband.—1 *Hale*, 47, 621; 1 *Haw. c.* 1, § 10. A wife cannot be convicted of felony in stealing her husband's goods. But if the wife take the goods of her husband and deliver them to B., who elopes with her and the goods, as her *adulterer*, this will then be felony in B.—*Dalt. c.* 10, *Pl.*; *R. v. Tolfrec, Ry. & M.* 243. Husband and wife being but one person in law, and their interest absolutely the same, they cannot give evidence for the benefit of each other.—*Gill. Ev.* 119; not even by the consent of the other party.—*Cas. Temp. Hard.* 264; neither can they be witnesses against each other.—1 *Phil.* 84; except in cases of personal injury to the wife, when she is, on the principle of humanity and justice as well as necessity, admitted as a witness against her husband; as where the husband is indicted for shooting at her, or attempting to poison her, or for assaulting and beating her.—1 *Str.* 633, *B. N. P.* 287; *R. v. Whitehouse, 2 Russ.* 606; *R. v. Jagger, Ib.* But in these cases, the wife ought only to be admitted to prove facts which cannot be proved by any other witness.—*Per Holroyd, J., 2 Russ.* 606. So her dying declarations are admissible against him, in the case of murder.—*R. v. Woodcock, 1 Leach.* 500; *R. v. John, Ib.* 504, *n.* (a). So the wife is always permitted to swear the peace against her husband.—*Ib.* Finally, it seems to be allowed that in all cases where a wife is a competent witness against her husband, she is also an admissible witness for him.—*R. v. Perry, cit. in R. v. Serjeant, 1 Ry. & M.* 354. And the same rules of necessity which admit the wife to give evidence against her husband, will also permit the husband to be a witness against the wife, in cases of personal injury,—such as

murder, assault, and surety of the peace where any violence is threatened by the wife against the husband. There is a foolish notion prevalent with the lower orders in England, that if a man sell his wife with a halter round her neck in *market overt*, this operates as a divorce, "*a vinculo matrimonii*," and that both buyer and seller may lawfully make such a bargain. Such a brutal act is, however, grossly illegal, and indictable at common law, as a misdemeanor.

WILLS.—See "Registry Office."

### WINES, &c.

By \*40 Geo. III. c. 4, entitled "an act for the summary conviction of persons selling spirituous liquors by retail, without license," it is enacted that if any person shall directly or indirectly sell any wine, brandy, rum, or other spirituous liquor by retail, without a licence, such person having been summoned to appear before any three or more justices, and lawfully convicted by the oath of one or more witnesses, shall forfeit £20, to be levied with costs of suit, by distress and sale, one half to the informer and the other to the province; and in default of distress, committed to the gaol of the district for three calendar months. § 2. Upon information upon oath, any one justice may issue his warrant against any offender *not usually resident in the place*, and compel him to enter into recognizance with one or more sureties to appear at the hearing; and in default of bail, commit him to gaol until complaint disposed of. § 3. No shopkeeper, duly licensed, shall sell less than one quart, under the penalty of £20, to be levied as aforesaid. § 4. Information to be laid within six calendar months.

By the \*3 Vic. c. 20, § 7, inspector of the district may grant a license to the owner or person in charge of any steamboat or vessel in this province, to sell or vend wine, brandy or other spirituous liquors, on board thereof, upon payment of £7 10s. currency; but none to be sold on board the same during the time such steamboat or vessel shall be laid up during the winter, under the same penalty as now imposed for selling spirituous liquors without license. § 8. Every owner, or person in charge of a steamboat or vessel, who shall vend or sell, or allow to be sold or vended, any wines or spirituous liquors on board the same, without such license from the inspector of the district within which such steamboat or vessel shall be laid up during the winter season, or from the inspector of the district in which the port or steamboat landing next adjacent to the wintering place of such steamboat or vessel shall happen to be



situated ; such owner or person in charge shall be subject to all the penalties now imposed by the laws of this province upon persons selling spirituous liquors without license ; which penalties shall be recovered before any two or more justices of the peace, and be levied by distress and sale of the tackling or furniture of such steamboat or vessel, by warrant under the hands and seals of the justices before whom such offender shall be convicted.

A conviction under the \*40 Geo. III. c. 4, for selling spirituous liquors without license, was quashed because the information stated that "the defendant was in the habit of selling spirituous liquors without license," without charging any specific offence, and not shewing time nor place, nor that the liquors were sold by retail ; and also because the conviction directed the defendant to pay the costs of the prosecution, without specifying the amount.—*Rex v. Ferguson, Trin. 3 & 4 Wm. IV., Cameron's Digest, p. 20.*

*Information for selling Wine, &c. without a License. (Archbold.)*  
Penalty £20. \*40 Geo. III. c. 4.

*Commencement as in the form ante, p. 376],* informeth us, that C. D., late of the township of —, in the county aforesaid, yeoman, within the space of six calendar months now last past, to wit, on the — day of —, in the year aforesaid, at the township aforesaid, in the county aforesaid, did sell a certain quantity of wine, (brandy, rum, or other spirituous liquor), to wit, one quart of wine, by retail, without being duly licensed so to do, contrary to the form," &c. [as ante, p. 376 to the end.]

*Summons.*

Same as the form ante p. 628.

*Warrant against the Defendant, if not usually resident in the place.*

County of —, } To the constable of —, in the said county.  
to wit.

Whereas C. D. of —, hath this day been charged before me, J. P., one of her Majesty's justices of the peace for the county aforesaid, for that he, the said C. D., on the — day of —, &c. [here state the matter as laid in the information]. These are therefore to command you, in her Majesty's name, forthwith to apprehend and bring before me or some other of her Majesty's justices of the peace for the said county, the body of the said A. B. to be dealt with according to the law. Herein fail you not. Given under my hand and seal, the — day of —, in the year of our Lord —, J. P.

N. B.—The act requires, in case a warrant is issued, that an information upon oath should be previously taken. The Justice should therefore, before granting the warrant, require the informer to produce his witness, whose deposition should be taken in writing and sworn to. This deposition should also state that the defendant is not usually resident in the county.

*Recognizance of the above Information.*

The form of the recognizance will be the same as *ante* p. 572. The condition of this recognizance is such, that if the above bounden C. D. shall and do personally appear at the hearing of the said complaint, on —, the — day of — next, at the township of —, in the said county, at the hour of — in the forenoon of the same day, before such of her Majesty's justices of the peace as shall be then and there assembled in petty sessions, and then and there answer to the complaint charged against him in the said information, and not depart without leave, then this recognizance to be void, or else to remain in full force.

*Commitment for want of sureties.*

County of —, To the constable of — in the said county, and to  
to wit. { the keeper of the common gaol at —, in the said  
county:

Whereas C. D. late of — stands charged by an information in writing, upon the oath of a credible witness, exhibited and sworn before me, J. P. esq. one of her Majesty's justices of the peace for the said county, for that he, the said C. D. on the — day of —, &c. [*reciting the matter charged in the information.*] And whereas the said C. D., not being usually a resident within this county, but commonly residing out of the same, is now required by me, the said justice, to enter into a recognizance with sufficient sureties, that is to say, himself in — pounds, and each of his sureties in the sum of — pounds, for his appearance at the hearing of the said information, on the — day of —, at — aforesaid, in the county aforesaid, before such of her Majesty's justices of the peace as shall be then and there assembled in petty sessions, pursuant to the statute in such cases made and provided; but the said C. D. hath neglected and refused so to do. These are therefore to command you, the said constable, to take the said C. D. and him safely to convey to the common gaol at —, aforesaid, with this precept: and I do hereby command you, the said keeper, to receive the said C. D. into the common gaol, and him there safely keep until the — day of — next; when you, the said keeper are hereby required to bring him, the said C. D., before the said justices, to answer the said complaint charged against him in the said information, at —, in the said county, unless the said C. D. shall sooner enter into such recognizance as aforesaid. Given under my hand and seal, &c.

The conviction should be in the form required by the 2<sup>d</sup> W. IV. c. 4—see *ante* p. 200. See also title "Distress Warrant," *ante* p. 252, and "Commitment," *ante* p. 167.

## WITNESSES.

Witnesses may be compelled to give their evidence in criminal cases by recognizance or subpoena. If a witness examined before a justice refuses to be bound over, the justice may commit him.—*Hale*, 864. And where a married woman refused to undertake to appear at the trial, or to find sureties for her

appearance, the magistrate was held justified in committing her.—*3 M. & S. 1*. But though a person may be committed for not entering into recognizance to prosecute and give evidence, yet the party shall not be committed for his inability to find a person to join in such recognizance; his own recognizance is all that can or ought to be required.—*Arch. Com. 12*. If the witness, after being served with a *subpoena*, neglect to appear, an application may be made to the Court of King's Bench, for an attachment against him.—*R. v. Ring, 8 T. R. 585; 1 Star. Ev. 119*. A witness, whether bound over or subpoenaed, or attending voluntarily for the *bona fide* purpose of giving evidence, is privileged from arrest, *eundo, redeundo et morando*, if no more than a necessary time is occupied by him upon either of those occasions.—*1 H. B. 636; 2 Bl. 1113*. In allowing witnesses time sufficient for these purposes, the courts are always disposed to be liberal.—*1 Phil. Ev. 4*. If a witness, under such circumstances, be arrested, the court out of which the *subpoena* issued, or the judge of the court in which the cause has been tried, will, upon application, order him to be discharged; but this privilege of a witness does not extend to arrests by his bail, for the purpose of surrender; for he is supposed to be in their custody even while he is attending as a witness.—*Exp. Lyne, 3 Star. Rep. 132*.

\*By stat. 3 Wm. IV. c. 3 § 8, it is enacted, that when the attendance of any person in gaol or upon the limits, shall be required in court, at the assizes, the court shall and may in its discretion, order the sheriff, gaoler, or other person having the custody of such prisoner, to deliver him to the person named in such order to receive him, which person shall thereupon instantly convey such prisoner to the place where the court issuing such order shall be sitting, to receive and obey such further order as to the said court shall seem meet, provided that no prisoner for debt or damages be removed out of the district.

By the 9 Vic. c. 95, witnesses in criminal cases may be summoned by subpoena from any part of the province.

To dissuade, or endeavour to dissuade a witness from giving evidence against a person indicted, is an offence at common law, though the persuasion should not succeed, and for which the party may be indicted as for a misdemeanor.—*1 Hawk. P. C. c. 21, § 15; R. v. Lawley, 2 Str. 904*.

#### Payment of the Expenses of Witness.

In civil cases a witness is not bound to attend unless his reasonable expenses be previously tendered to him, but in criminal cases he is bound to attend unconditionally.—*3 Hawk. c. 46, § 173*. But, several statutes enable the court to allow

prosecutors and witnesses a remuneration for their expenses and loss of time, and in one particular instance entitled the witnesses to a tender of expenses.

By stat. 25 Geo. II. c. 36, § 11, the court before whom any person hath been tried and convicted of any grand or petit larceny, or other felony, may, at the prayer of the prosecutor, and on consideration of his circumstances, order the treasurer of the county in which the offence shall have been committed, to pay him such sum as they shall judge reasonable, not exceeding the expenses he was put to in carrying on the prosecution, with a reasonable allowance for his time and trouble; and the clerk of the assize or of the peace shall forthwith make out such an order, and deliver the same to the prosecutor, on paying 1s. and the treasurer shall pay the same on sight, and be allowed the same in his accounts.

By stat. 27 Geo. II. c. 3, § 3, when any poor person shall appear on *recognizance* in court, to give evidence in cases of grand or petit larceny, or other felony, the court may order the treasurer to pay him such sum as they shall think reasonable for his time, trouble and expenses; which order the proper officer shall make out for the fee of 6d. And by stat. 13 Geo. III. § 7, the court before whom any person hath been tried and convicted of any grand or petit larceny, or other felony, or before whom any person hath been tried and acquitted of any grand or petit larceny, or other felony—in case it shall appear to the said court that there was a reasonable ground of prosecution, and that the prosecutor had *bona fide* prosecuted—may order the treasurer to pay to such prosecutor such sum as they shall think reasonable, not exceeding the expenses he was *bona fide* put unto; making also, if he shall appear to be in poor circumstances, a reasonable allowance for his trouble and loss of time; which order the clerk of assize or clerk of the peace respectively shall forthwith make out and deliver to him, on being paid for the same 1s. and no more; and the treasurer, upon sight of the order, shall forthwith pay the same.

For the forms of "Summons," "Warrant," and "Recognizance" of a witness, see title "Justice of the Peace," ante, p. 406, 411.

*Commitment of a Witness for refusing to enter into his own Recognizance to appear and give Evidence.*

County of ——— } To the keeper of the gaol at ———, in the said county.  
to wit.

Forasmuch as A. B. whose body is herewith sent you, hath admitted before me, J. R. esq., one of her Majesty's justices of the peace for the said county, that (he was present when a certain felony and robbery was committed upon the person of A. B. on Friday

last, at —), but hath refused to be examined upon oath respecting the said felony, and to enter into his recognizance now here required by me, the said justice, in the sum of —, to appear and give evidence upon a bill of indictment to be preferred at the next assizes and general gaol delivery for the said county, against C. D., who stands charged with said felony; and the said A. B. being a material and necessary witness for the prosecution in such case: these are therefore to authorise and require you, the said keeper, to receive the said A. B. and him safely keep in your custody until he shall enter into such recognizance in due form of law, or be otherwise discharged in due course of law; and for so doing this shall be your sufficient warrant. Given under my hand and seal, at —, this — day of —, 185 —.

**Another Form.**

County of —, } To the constable of — and to the keeper of the  
to wit. } common gaol at — in the said county.

Whereas, A. B. was this day charged before me, J. C. Esq. one of her Majesty's justices of the peace in and for the — county, with having feloniously stolen — the property of C. D. of — yeoman, and upon examination of the said A. B. one E. F. of — in the said county, labourer, did give material evidence on oath, before me, the said justice, against the said A. B., touching the said felony; whereupon the said E. F. is required by me, the said justice, to become bound in a recognizance in the sum of £ — conditioned for his personal appearance at the next general quarter sessions, to be held in and for the said county, then and there to give evidence as he knoweth, on the part of our lady the Queen, against the said A. B. on his trial for the said felony; but inasmuch as the said E. F. hath obstinately and contemptuously refused to enter into such recognizance, these are, in her Majesty's name, to command you, the said constable, forthwith to convey and deliver the said E. F. into the custody of the keeper of the common gaol aforesaid, together with the duplicate of this, my warrant; and also, to command you, the said keeper, to receive the said E. F. into your custody in the said common gaol, and him there safely to keep, until the next general quarter sessions to be held in and for the said county, or until he shall enter into such recognizance as aforesaid.

Given under my hand and seal, &c.

**Form of an Indictment for dissuading a Witness to give evidence.**  
(CHITTY.)

County of —, } The Jurors, &c. That on, &c. a certain writ of  
to wit. } our lady the Queen, called a *subpoena ad testificandum*, had been and was duly issued and tested, by and in the names of C. D. of &c. at &c. the same day and year aforesaid, the said C. D. then and there being *custos rotulorum*, in and for the same county, which said writ was directed to E. F. and G. H. by which said writ our said lady the Queen commanded, &c. (*recite the writ*.) And the jurors, &c. do further present that a copy of the said writ was on &c. at &c. duly served on the said J. K. who then and there had notice to appear and give evidence according to the exigency of such writ, and that the evi-

dence of the said J. K. at the time of issuing the said writ, and from thence until and upon the said &c. therein mentioned, was material and necessary to have been given before the said grand jury, on the said bill of indictment so to be preferred against the said A. B. as aforesaid; and that at the sessions of the peace, holden by adjournment at — aforesaid, in and for the said county, on &c. aforesaid, such bill of indictment was preferred against the said A. B. to and before a certain grand jury, then and there assembled in that behalf. And the jurors, &c. do further present that A. B., late of &c., being an evil disposed person, and contriving and intending to obstruct and impede the due course of justice on &c., unlawfully and unjustly dissuaded, hindered, and prevented, the said J. K. from appearing before the said justices at the said sessions of the peace, holden as aforesaid, to testify the truth and give evidence before the said grand jury, on the said bill of indictment so preferred against the said A. B. as aforesaid; (and the said A. B. in consequence thereof, did not so appear and give evidence, according to the exigency of the said writ,) to the great obstruction, hindrance, and delay of public justice, in contempt &c. to the evil &c. and against the peace, &c. And the jurors aforesaid, upon their oath aforesaid, do further present, that on the said, &c., a certain other writ of our said lady the Queen had duly issued, directed to the said E. F. and G. H., by which said last mentioned writ our said lady the Queen commanded the said E. F. and G. H. that &c. (*recite the writ.*) And the jurors, &c. do further present, that the evidence of the said J. K. at the time of issuing the said last mentioned writ, and from thence until and upon the said, &c. therein mentioned, was material and necessary to have been given before the said grand jury, in the said bill of indictment, to be preferred against the said A. B. as aforesaid. And the jurors, &c., do further present, that the said A. B. being an evil disposed person, &c. (*same as first count saying, "endeavoured to dissuade," &c. and omitting the allegation between the brackets.*)

### WOLVES.

By \*6 W. IV. c. 28, the \*49 G. III. c. 3, is repealed. § 3. Any person who shall produce the head of a wolf with the ears on before any justice of the peace, acting for any district in this province, and shall make oath or affirmation, as the case may be, or otherwise prove to the satisfaction of the justice that the wolf was killed within that district, or within one mile of an actual settlement in the district, shall be entitled to receive of the treasurer of the district the sum of £1 10s as a bounty for the same. § 4. The justice before whom the head of the wolf shall be produced having first cut off the ears thereof, shall give the person a certificate that the fact has been proved to his satisfaction, which certificate shall authorize the person holding the same to demand and receive from the treasurer the said bounty. § 4. who shall pay the same on presenting such certificate, provided the funds of the district in hand shall enable him, otherwise



wise out of the first monies which shall come into his hands. § 5. Annual expenses for building a court-house and gaol; and keeping the same in repair, the fees of the clerk of the peace, and salary of the gaoler, the maintenance of prisoners, and wages of members of Assembly, *to be first paid.* § 6. When the funds of the district are insufficient, such certificate shall be a lawful tender towards any district rate or assessment, wherein such wolf shall have been destroyed. § 7. This act to be in force for *four* years.

Continued by the 4 & 5 V. c. 23, 8 V. c. 26, and 13 & 14. V. c. 10.

### WOMEN.

If a woman, quick with child, be condemned either for treason or felony, she may allege her being with child, in order to get the execution respited, and thereupon, the sheriff shall be commanded to take her into a private room and to impanel a jury of matrons, to try and examine whether she be quick with child or not; and if they find her quick with child, the execution shall be respited till her delivery. But a woman cannot demand such respite of execution by reason of her being quick with child more than once.—2 *Haw.* 464.

See also titles "Abduction," "Rape."

### WOOD.

By 4 & 5 V. c. 25, § 33, if the whole or any part of any tree, sapling or shrub, or any underwood, or any part of any live or dead fence, or any post, pale, rail or stile, or gate, or any part thereof, being of the value of two shillings at the least, shall by virtue of a search warrant, to be granted as in the said act is mentioned, be found in the possession of any person, or on the premises of any person with his knowledge; and such person being carried before a justice of the peace, shall not satisfy the justice that he came lawfully by the same, he shall on conviction by the justice, forfeit and pay over and above the value of the article or articles so found, any sum not exceeding £2. § 55. Any person found committing any offence punishable by this act, either upon indictment or *summary conviction*, may be immediately apprehended without a warrant by any peace officer, or by the owner of the property, or by the servant of any person authorised by such owner, and forthwith taken before some neighboring justice, to be dealt with according to law; and if any credible witness shall prove on oath before a justice that there is reasonable cause to suspect that any property whatsoever, with respect to which any such offence shall have been committed, is in any dwelling

house, outhouse, garden, yard, croft or other place or places, the justice may grant a search warrant, as in the case of stolen goods.

For further proceedings, see title "Summary Conviction."

**WORKMEN.**

By stat. 2 & 3 Ed. VI. c. 15, § 1, if any artificers, workmen, or labourers, do conspire, covenant or promise together, or make any oaths, that they shall not make or do their works but at a certain price or rate; or shall not enterprise or take upon them to finish that another hath begun; or shall do but a certain work in a day; or shall not work but at certain hours and times;—that then every person so conspiring, covenanting, swearing or offending, being lawfully convicted thereof, by witness, confession or otherwise, shall forfeit, for the first offence, £10 to the King, if he have sufficient to pay the same, and do also pay the same within six days next after his conviction; or else shall suffer for the same offence twenty days' imprisonment, and shall have only bread and water for his sustenance: and for the second offence, shall forfeit £20 to the King, if he have sufficient to pay the same, and also do pay the same within six days next after his conviction; or else shall suffer for the second offence punishment of the pillory; and for the third offence, shall forfeit £40 to the king, if he have sufficient to pay the same, and also do pay the same within six days next after his conviction, or else shall sit on the pillory and lose one of his ears; and also shall, at all times after that, be taken as a man infamous, and his sayings, depositions or oath, not to be credited at any time, in matter of judgment. § 3. Justices of the assize, justices of the peace, &c., at all and every their sessions and courts, shall have full power and authority to inquire, hear and determine all and singular such offences committed against this statute, and to punish, or cause to be punished, the offenders, according to the statute. Any one workman may refuse to work, till he is paid the price he pleases to fix upon his *own* labour; but if two or more enter into an engagement of this kind, they are guilty of a *conspiracy*, and may be prosecuted by an indictment, or an information.—*Bl. Com.* p. 180; *Ed. 15* (note.)

See also titles "Conspiracy," p. 180, and "Master and Servant," p. 469.

**WRECK.**

By 4 & 5 V. c. 35, § 22, whosoever shall plunder or steal any part of any ship or vessel which shall be in distress or wrecked, stranded or cast on shore, or any goods, merchan-

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dize or articles of any kind belonging to such ship or vessel, and be convicted thereof, shall be liable at the discretion of the court to be imprisoned at hard labour in the Provincial Penitentiary for any term not exceeding fourteen years nor less than seven years, or be imprisoned in any other prison or place of confinement for any term not exceeding two years. § 23. If any goods, merchandize or other articles, belonging to any ship or vessel in distress or wrecked, stranded or cast on shore, as aforesaid, shall, by virtue of a search warrant to be granted as hereinafter mentioned, be found in the possession of any person, or on the premises of any person with his knowledge, and such person being carried before a justice of the peace shall not satisfy the justice that he came lawfully by the same, then the same shall, by order of the justice, be forthwith delivered over to or for the use of the rightful owner thereof; and the offender on conviction before the justice, shall forfeit and pay such sum of money not exceeding £20, as to the justice shall seem meet. § 24. If any person shall offer or expose for sale any goods, merchandize, or articles which shall have been unlawfully taken, or reasonably suspected so to have been, from any ship or vessel in distress or wrecked, stranded or cast on shore, as aforesaid, in any such case any person to whom the same shall be offered for sale, or any officer of the customs or peace officer, may lawfully seize the same, and shall with all convenient speed carry the same, or give notice of such seizure, to some justice of the peace; and if the person who shall have offered the same for sale, being duly summoned by such justice, shall not appear and satisfy the justice that he came lawfully thereby, then the same shall be forthwith delivered over by order of the justice to the rightful owner thereof, upon payment of a reasonable reward (to be ascertained by the justice) to the person who seized the same: and the offender upon conviction shall pay not exceeding £20, as to the justice shall seem meet.

By stat. 4 & 5 V. c. 26, § 10, whosoever shall by force prevent or impede any person endeavoring to save his life from any ship or vessel which shall be in distress or wrecked, stranded or cast on shore (whether he shall be on board, or shall have quitted the same) shall be guilty of felony, and being convicted thereof shall be liable at the discretion of the court to be imprisoned at hard labour in the Provincial Penitentiary for the term of his natural life, or for any term not less than seven years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years. § 11: Whosoever shall unlawfully and maliciously destroy any part of any ship or vessel which shall be in distress, or

wrecked, stranded or cast on shore, or any goods, merchandize, or article of any kind, belonging to such ship or vessel, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be imprisoned at hard labour in the Provincial Penitentiary for any term not less than seven years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years.

By stat. 4 & 5 V. c. 27, § 24, if any person shall assault, and strike, or wound, any magistrate, officer, or other person whatsoever, lawfully authorised, on account of the exercise of his duty, in or concerning the preservation of any vessel in distress, or of any vessel, goods or effects, wrecked, stranded or cast on shore, or lying under water, every such offender being convicted thereof shall be liable to be imprisoned at hard labour in the Provincial Penitentiary for any term not less than seven years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years.

For proceedings to recover penalties under 4 & 5 V. c. 25, see title "Summary Conviction."

## ADDENDA.

### CITIES.

By the 15th & 14th Vic. c. 64, § 9, after the erection of any town into a city, such city and the liberties thereof shall (if such city when a town shall have been entitled to be represented by a member or members in the Legislative Assembly) for the purposes of representation, cease to form a part of the county, and shall be deemed to be in the relative position to the county, on the borders whereof it shall be situate, provided by the 85th § of the 12 Vic. c. 81, and the other provisions thereof.

### DOGS.

The stealing of dogs is not a *felony*, either at common law or by statute—4 Bl. Com. 236; but is punishable by the following statute:

By stat. 4 & 5 V. c. 25, § 30, if any person shall steal any dog, or shall steal any beast or bird ordinarily kept in a state of confinement not being the subject of larceny at common law, every such offender being convicted thereof before a justice of the peace, shall for every such offence forfeit and pay over and above the value of the dog, beast, or bird, such sum of money not exceeding £5, as to the justice shall seem meet.

For proceedings under this statute see title "Summary Conviction."

A mastiff going at large unmuzzled, from the ferocity of his nature being dangerous, seems to be a common nuisance, and the owner may be indicted.—1 Burn. 918.

### FISH.

By 7 Vic. c. 18, § 1, it is enacted that it shall not be lawful for any person to take any fish called "Lunge" or "Maskinonge," or "Salmon-trout," in Lake Memphramagog, or in any of the lakes, rivers or streams, in any of the counties of Stanstead, Sherbrooke, Sheffield, Missisquoi and Drummond, nor within the counties of Essex and Kent, between the first day of August and the first day of December, in every year, by means of spears or seines, or in any other way than by a single hook. § 2. Nor for any person to build any fish ponds

In the river St. Francis, or in any of its tributary rivers or streams, so as in any way to obstruct the main channels within any of the said counties, for the purpose of taking salmon, or to take any trout or other small fish when they run into the small streams, brooks, or inlets within any of the said counties, for shade, during the summer months, with nets or baskets, or in any other way than by a single hook. § 3. Any person offending against the provisions of this act, on conviction before one or more justices, shall incur a penalty not exceeding £2, in the discretion of such justice or justices; which penalty, if not paid within eight days, shall be levied by distress and sale of the goods and chattels of such party under the warrant of such justice or justices, and one moiety of such penalty shall belong to her Majesty for the use of the province, and the other to the prosecutor; and in default of payment, and no goods and chattels of the offender being found whereon to levy the same, then such offender shall be by the said justice, or justices, committed to the common gaol of the district, for a period not exceeding eight days, unless the penalty and costs shall be sooner paid.

#### LOCK-UP HOUSES.

By the 13th & 14th Vic. c. 64, § 10, the municipal councils of counties and unions of counties, are authorised to establish a lock-up house in any town, incorporated village, or police village, within the jurisdiction of such council, and to establish and provide for salary or fees to be paid to the constable in charge thereof, to be specially appointed by the magistrates of such county at general quarter sessions; such constable to be resident in such town or village, and be one of the constables of the town or township: *provided* 1st, that this act shall not affect any lock-up houses established by law heretofore in force; 2nd, that parties summarily convicted before magistrates under the summary punishment act \*4 Wm. IV. c. 4, may, in the discretion of the committing magistrate, be committed to the nearest lock-up house in the county or union of counties, in which the conviction took place, instead of the common gaol.

#### MUNICIPAL CORPORATIONS.

**Laws.**—By the 13th & 14th Vic. c. 64, § 11, the provisional municipal councils in Upper Canada are authorised to make by-laws for borrowing money for the purchase of the necessary county property, and the erection of county buildings, and for other county works, subject to the restrictions and provisions for securing the payment of loans made to such councils within a limited time, as may by law be imposed upon such councils,

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*Dissolution of Unions.*—§ 12. Upon the dissolution of any union of counties, the town reeves and deputy town reeves of the junior county, shall, until replaced by new elections, form the municipal council of such junior county; and the provisional warden, and other officers of the provisional municipal council, shall be the warden and officers of such junior county until a new election; and all the by-laws of such provisional municipal council shall continue in force until amended, altered or repealed. § 13. And every municipal corporation so substituted for such provisional municipal council, shall be charged with the debts, liabilities and obligations of such provisional municipal council; and all actions and suits continued in the name of such substituted municipal council. § 14. No by-law passed by any provisional municipal council according to the 177th § of the 12 Vic. c. 81, for imposing a rate for the payment of any debt created by loan or otherwise, shall be repealed by such substituted council until such debt and interest be fully paid.

*Provisional Municipal Council.*—§ 16. In any proclamation erecting the town reeves and deputy town reeves of any junior county into a provisional municipal council, a time and place may be appointed for holding the first meeting, and one of such town reeves or deputy town reeves appointed to preside thereat; and in default thereof, and in all cases of the erection of such provisional municipal council by act of parliament, such time and place, and such presiding officer, shall be appointed by the sheriff of the united counties.

*Qualification.*—§ 17. The provisions contained in the 208th § of the 12 Vic. c. 81, as amended by this act, shall be and continue in force until the 31st day of December, 1851; and the persons therein described as entitled to elect and be elected under the same, shall be those entitled to elect and be elected respectively at all the municipal elections to be held under the said act previous to that day.

#### OATHS OF OFFICE.

By the 13th & 14th Vic. c. 18, the 3 Wm. IV. c. 12, is repealed, and by § 3 the following oath of office is substituted, to be taken by public officers civil or military, barristers, attorneys, &c., throughout the province:

I, A. B., do sincerely promise and swear that I will be faithful and bear true allegiance to Her Majesty Queen Victoria (*or the reigning sovereign for the time being*), as lawful sovereign of the united kingdom of Great Britain and Ireland, and of this province dependent on and belonging to the said kingdom, and that I will defend to the utmost of my power against all traitorous conspiracies, or attempts whatever,

which shall be made against her person, crown and dignity; and I will do my utmost endeavour to disclose and make known to her Majesty, her heirs or successors, all treasons or traitorous conspiracies and attempts which I shall know to be against her or any of them; and all this I do swear, without any equivocation, mental evasion or secret reservation, and renouncing all pardons and dispensations from any person or power whatsoever, to the contrary. So help me God.

§ 3. The above form, and no other, shall be that of the oath of allegiance to be administered to and taken by all persons in this province taking the oath of allegiance; and the power to administer such oath is hereby invested in all magistrates, and other officers now lawfully authorised to administer the oath of allegiance.

§ 4. And shall be taken within the time prescribed by law with respect to the oaths heretofore required.

§ 5. Affirmation allowed in certain cases. § 6. And the taking of the sacrament as a qualification for office, dispensed with.

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